

# CITY COUNCIL OF THE CITY OF ANNAPOLIS

## RESOLUTION NO. R-6-05

Introduced by Mayor Moyer

### LEGISLATIVE HISTORY

First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
2/14/05	3/23/05		

Referred to:	Meeting Date:	Action Taken:	
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### A RESOLUTION concerning

#### Cable Services Agreement

**FOR** the purpose of authorizing the Mayor to execute an agreement with Comcast of Maryland, Inc. for the granting and renewal of non-exclusive, revocable franchises for cable services in the City of Annapolis; and matters generally relating to said agreement.

**WHEREAS,** Comcast of Maryland, Inc. ("Grantee") owns, operates and maintains a cable television system (the "System") in the City of Annapolis, Maryland ("Grantor") pursuant to the following documents: Resolution R-3-97 adopted March 10, 1997; Resolution R-23-94 adopted June 6, 1994; Resolution R-62-94 adopted December 6, 1994, Amended Franchise Agreement dated December 12, 1994; Resolution R-55-95 adopted December 11, 1995; and Agreement Concerning Consent to Cable Franchise Transfer dated April 15, 1997 (collectively, the "Franchise"), and Grantee is the duly authorized holder of the Franchise; and

**NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that the Mayor of the City of Annapolis is hereby authorized to execute the attached agreement with Comcast of Maryland, Inc. for the granting and renewal of non-exclusive, revocable franchises for cable services in the City of Annapolis.

**AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that it confirms that the Franchise is in full force and effect, and Grantor is aware of no circumstances or

1 conduct by Grantee as of the date hereof which would constitute a default by Grantee of its  
2 obligations under the Franchise.  
3  
4  
5

**ADOPTED** this 11<sup>th</sup> day of April, 2005.

**ATTEST:**

**THE ANNAPOLIS CITY COUNCIL**

\_\_\_\_\_  
**Deborah Heinbuch, MMC**  
**City Clerk**

**BY:** \_\_\_\_\_  
**ELLEN O. MOYER, MAYOR**

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**ANNAPOLIS CITY CABLE TELEVISION  
FRANCHISE AGREEMENT**

**BY AND BETWEEN**

**THE MAYOR AND CITY COUNCIL OF ANNAPOLIS**

**AND**

**COMCAST OF MARYLAND, INC.**

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ANNAPOLIS CITY CABLE TELEVISION  
FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between THE MAYOR AND THE CITY COUNCIL OF ANNAPOLIS, a municipal corporation of the State of Maryland ("City"), and COMCAST OF MARYLAND, INC., a Colorado corporation with its principal place of business at 253 Najoles Road, Millersville, Maryland, Maryland ("Franchisee"):

WITNESSETH:

WHEREAS, the City is authorized to grant and renew non-exclusive, revocable franchises for Cable Services (as defined in Section 1) within the City; and

WHEREAS, pursuant to the federal Cable Act (as defined in Section 1), the Congress established certain procedures and standards for cable franchising and renewal of franchises in order to, among other purposes, encourage the growth and development of cable systems, assure that cable systems are responsive to the needs and interests of the local community, assure that cable operators provide and are encouraged to provide the widest possible diversity of information services and other services to the public and assure that access to Cable Services is not denied to any Person (as defined in Section 1); and

WHEREAS, the City granted the predecessor in interest of the Franchisee (as defined in Section 1 hereof), a franchise for the provision of cable television services (the "Prior Franchise"), the terms of which are set forth in a Franchise Agreement between the City and United Cable Television, Inc., dated as of December 12, 1994.; and

WHEREAS, Franchisee has requested that the City renew the non-exclusive Prior Franchise on terms to be agreed by the City and the Franchisee; and

WHEREAS, the Franchisee offered to provide certain facilities and equipment as well as various services (as defined in Section 1) and to perform certain additional undertakings and the Franchisee and the City subsequently engaged in arm's-length negotiations regarding the terms

1 and conditions of a proposed franchise; and

2  
3 WHEREAS, the construction, installation, maintenance of a Cable System (as defined in  
4 Section 1) involves the occupation of, and placement of private commercial facilities in, the Public  
5 Ways (as defined in Section 1) within the City; and

6  
7 WHEREAS, a final franchise renewal shall be granted by a resolution of the Council (as  
8 defined in Section 1) for the compensation and on the terms approved by the vote or resolution of  
9 the Council (as defined in Section 1); and

10  
11 WHEREAS, the Council held a public hearing on the proposed franchise agreement  
12 memorializing the compensation, terms and conditions of the proposed franchise; and

13  
14 WHEREAS, said hearing was a full public proceeding affording due process at which the  
15 Council reviewed the Franchisee's character and its financial, legal and technical ability to carry out  
16 its obligations pursuant to this Agreement (as defined in Section 1), and reviewed the Franchisee's  
17 plan for operating, maintaining, and enhancing the System (as defined in Section 1); and

18  
19 WHEREAS, the City has relied on the Franchisee's representations and has considered the  
20 information that the Franchisee has presented to it; and

21  
22 WHEREAS, the City has determined that, subject to the terms and conditions set forth in this  
23 Agreement, the grant of a renewal of a non-exclusive franchise to the Franchisee is consistent with  
24 the federal Cable Act, the City Charter, all other applicable laws and regulations, and the public  
25 interest; and

26  
27 WHEREAS, the Council approved the compensation, terms and conditions of the proposed  
28 franchise, as set forth in this Agreement; and

29  
30 WHEREAS, the Council adopted a resolution authorizing the Mayor to execute this  
31 Agreement and granting the Franchisee a non-exclusive franchise on the terms and conditions set  
32 forth in this Agreement; and

33

1 WHEREAS, the parties intend that this Agreement shall be effective as of April \_\_\_\_, 2005,  
2 and agree to abide by the Prior Franchise through December 31, 2004; and  
3

4 WHEREAS, the City intends to exercise the full scope of its powers, including its police  
5 power and contracting authority, to: promote the public interest; protect the public health, safety and  
6 welfare of its residents; assure the widespread availability of cable television services; and to  
7 maximize the diversity of programming over the System (as defined in Section 1); and  
8

9 WHEREAS, the City and Franchisee have reached agreement on the terms and conditions  
10 set forth in this Agreement through arm's-length negotiations, and voluntarily agree to be bound by  
11 those terms and conditions;  
12

13 NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby  
14 incorporated in and made a part of this Agreement by this reference, the mutual promises,  
15 covenants and agreements contained herein, and other good and valuable consideration, the  
16 receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as  
17 follows:  
18

**SECTION 1. DEFINED TERMS.**

For purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 1.

“Abandonment” means the cessation, by act or failure to act of the Franchisee or any Affiliated Person, of the provision of all, or substantially all, of the Services then being provided over the System to Subscribers or the City for seven (7) or more consecutive days, except if due to an event beyond the control of the Franchisee as set forth in Section 14.1 of this Agreement.

“Affiliated Person” means each Person who falls into one (1) or more of the following categories:

(i) each Person having, directly or indirectly, a Controlling Interest in the Franchisee;

(ii) each Person in which the Franchisee has, directly or indirectly, a Controlling Interest;

(iii) each officer, director, general partner, limited partner holding an interest of five percent (5%) or more, joint venturer, or joint venture partner of the Franchisee; and

(iv) each Person, directly or indirectly, controlling, controlled by or under common Control with the Franchisee;

provided that Affiliated Person shall in no event mean the City, any PEG Entity, or any creditor of the Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of falling within clause (iii) of this definition or by reason of owning a Controlling Interest in; being owned by; or being under common ownership, common management or common Control with; the Franchisee.

“Agreement” or “Franchise Agreement” means this Agreement and any amendments or modifications.

1 “Applicable Law” means all federal, state, and local laws, statutes, codes, ordinances, resolutions,  
2 orders, rules, and regulations, including but not limited to all FCC resolutions, orders, rules, and  
3 regulations, and the Annapolis City Charter; and the administrative and judicial decisions  
4 interpreting these sources of law, but in all uses Applicable Law shall be limited by Section 11.2 of  
5 this Agreement.

6 “Business Day” means any day that is not a Holiday.

7 “Cable Service” means (i) the one-way transmission to Subscribers of (a) video programming or  
8 (b) other programming service, and (ii) Subscriber interaction, if any, which is required for the  
9 selection or use of such video programming or other programming service.

10 “Cable System” means any facility consisting of a set of closed transmission paths and associated  
11 signal generation, reception, and control equipment that is primarily designed to provide Cable  
12 Service which includes video programming and which is provided to multiple Subscribers within a  
13 community, but such term does not include:

14 (i) a facility that serves only to retransmit the television Signals of one or more television  
15 broadcast stations;

16 (ii) a facility that serves Subscribers without using any Public Ways;

17 (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of  
18 Title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47  
19 U.S.C. § 201 *et seq.*), as amended, except that such facility shall be considered a cable  
20 system (other than for purposes of Section 621(c) of the Cable Act (47 U.S.C. § 541(c)) to  
21 the extent such facility is used in the transmission of video programming directly to  
22 Subscribers, unless the extent of such use is solely to provide interactive on-demand  
23 services;

24 (iv) an Open Video System that complies with Section 653 of the Cable Act (47 U.S.C.  
25 § 573) (or any successor thereto) and the rules promulgated pursuant to that section; or

26 (v) any facilities of any electric utility used solely for operating its electric utility systems.

1 The foregoing definition of "Cable System" shall not be deemed to circumscribe the valid authority  
2 of any governmental body, including the City, to regulate the activities of any other communications  
3 system or provider of communications services.

4 "Channel" means a band of frequencies in the electromagnetic spectrum utilizing various means of  
5 transmission (including, without limitation, optical fibers or any other means now available or that  
6 may become available), which band of frequencies is capable of carrying one (1) or more video,  
7 audio, voice, or data Signals.

8 "City" means the Mayor and City Council of Annapolis, Maryland or, as appropriate in the case of  
9 specific provisions of this Agreement, any Council, bureau, authority, agency, commission or  
10 department of, or any other entity of or acting on behalf of, the Annapolis City government or any  
11 officer, official, employee, or agent of the Annapolis City Government, any designee of any of the  
12 foregoing, or any successor thereto.

13 "City Charter" means the Annapolis City Charter.

14 "Finance Director" means the Finance Director of the City, the Finance Director's designee, any  
15 person legally acting in such capacity, or any successor to her powers and responsibilities.

16 "Control" of or "Controlling Interest" in a Person or in the Cable System or the Franchise, means  
17 working control in whatever manner exercised, including, without limitation, working control through  
18 ownership, management, debt instruments, or negative control, as the case may be, of such  
19 Person, the Cable System, or the Franchise. A rebuttable presumption of the existence of Control  
20 of, or a Controlling Interest in, a Person shall arise from the beneficial ownership, directly or  
21 indirectly, by any Person or group of Persons acting in concert (other than underwriters during the  
22 period in which they are offering securities to the public) of five percent (5%) or more (for voting  
23 interests), or fifty percent (50%) or more (for non-voting interests), of such Person. Control or  
24 Controlling Interest as used in this Agreement may be held simultaneously by more than one (1)  
25 Person or group of Persons. Notwithstanding the preceding sentence, if one (1) Person owns a  
26 majority of the voting interests of a Person, the Cable System, or the Franchise, such owner shall  
27 have sole Control of and shall possess the sole Controlling Interest in such Person, the Cable  
28 System, or the Franchise unless another Person exercises *de facto* control (as that term is defined  
29 under the precedents of the Federal Communications Commission) of the Controlled Person, the

1 Cable System, or the Franchise, in which case such other Person also shall have Control and a  
2 Controlling Interest.

3 "Council" means the City Council of the City, its designee, or any successor to its powers and  
4 responsibilities.

5  
6 "Day" or "Days" means calendar day or days unless otherwise specified.

7 "Digital Service" means a Service which is transmitted in a digital format.

8 "Digital Television Channel" means a Channel which is transmitted in a digital format; which utilizes  
9 digital compression and encryption technologies; and which occupies sufficient bandwidth to enable  
10 the transmission of a high-quality television program at the Cable System's standard compression  
11 level(s).

12 "DOT" shall mean the City's Department of Transportation, its designee, or any successor thereto.

13 "DNEP" shall mean the City's Department of Neighborhood and Environmental Programs, its  
14 designee, or any successor thereto.

15 "DPW" shall mean the City's Department of Public Works, its designee, or any successor thereto.

16 "Drop" means the cable or wire that connects the distribution portion of a Cable System to a  
17 Subscriber's premises.

18 "Economically and Technically Feasible and Viable" means capable of being provided through  
19 technology that has been demonstrated to be feasible for its intended purpose, in an operationally  
20 workable manner, and in a manner whereby the Cable System has a reasonable likelihood of being  
21 operated on reasonably profitable terms.

22 "Effective Date" means April \_\_\_\_, 2005.

23 "FCC" means the Federal Communications Commission, or the successor to its responsibilities.

24 "Franchise" means the non-exclusive right granted, by ordinance and subject to this Agreement, to  
25 Franchisee to construct, operate, repair, maintain, and reconstruct the Cable System on, over,  
26 under, upon, across, and along the Public Ways.

1 “Franchise Area” or “Service Area” shall mean all the area within the boundaries of the City.

2 “Franchisee” means Comcast of Maryland, Inc..

3 “Gross Revenue” means all revenue, as determined in accordance with generally accepted  
4 accounting principles, that is derived by the Franchisee and by each Affiliated Person from the  
5 operation of the Cable System to provide Cable Services.

6 A. Gross Revenue shall include, to the extent it is received by the Franchisee,  
7 revenue from any other Person, including, without limitation, Leased or PEG  
8 Channel programmers that is derived from the operation of the Cable  
9 System to provide Cable Services.

10 B. Gross Revenue shall also include by way of example and without limitation:

11  
12 1. revenue received by the Franchisee which represents or can be  
13 attributed to a Subscriber fee or a payment for the use of the Cable  
14 System for the sale of merchandise through any Cable Service  
15 distributed over the Cable System;

16 2. franchise fees received from Subscribers;

17 3. fees received from Subscribers to support PEG Channels;

18 4. to the extent allowed by Applicable Law and as provided in Section 4.9  
19 of this Agreement, revenue generated from the provision of cable  
20 modem service, or non-cable services;

21 5. any revenue generated by the Franchisee or by any Affiliated Person  
22 through any means which has the effect of avoiding the payment of  
23 compensation that would otherwise be paid to the City for the  
24 Franchise granted in this Agreement;

25 6. any revenue from Subscriber equipment sold or leased by the  
26 Franchisee or an Affiliated Person;



7. late fees and administrative fees;
8. revenue derived from program guides;
9. revenue derived from forfeited deposits;
10. revenue derived from installation, disconnection, or service call fees;
11. studio rental, production equipment, and personnel fees;
12. revenue derived from commissions;
13. any actual bad debt that is written off but subsequently collected (such bad debt shall be included as Gross Revenue for the period in which it is collected); and
14. other revenues that may be posted in the general ledger as an offset to an expense account.

C. Gross Revenue shall also include all advertising revenue which is derived, directly or indirectly, from or in connection with the sale of advertising on the Cable System, whether by the Franchisee, or whether collected by an Affiliated Person or any other Person for Franchisee. If the advertising revenue received from the Affiliated Person is only net advertising revenue, advertising revenues from an Affiliated Person shall be grossed up as if the Franchisee had received the advertising revenue directly. Notwithstanding the preceding sentence, standard and reasonable commissions retained by a regional interconnect that is an Affiliated Person may be excluded from Gross Revenue.

D. Gross Revenue shall not include:

1. any compensation awarded to the Franchisee based on the City's condemnation of property of the Franchisee;

2. the revenue of any Person, including, without limitation, a supplier of programming to the Franchisee, to the extent that such revenue is also included in Gross Revenue of the Franchisee;
3. the revenue of the Franchisee or any other Person which is generated directly from the sale of any merchandise through any Service distributed over the Cable System, other than that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise—for example, the portion of such payment attributable to a commission for the Franchisee or an Affiliated Person—which portion shall be included in Gross Revenue;
4. taxes imposed by law on Subscribers which the Franchisee is obligated to collect, it being acknowledged that Franchise Fees under this Agreement are not considered taxes;
5. amounts collected by the Franchisee from Subscribers on behalf of Leased or PEG Channel programmers, other than Affiliated Persons, to the extent that all of the amounts collected, in excess of the amounts deducted pursuant to Section 10.6 of this Agreement and paid to the City, are passed on by the Franchisee to such programmers;
6. the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Franchisee to the Affiliated Person for ordinary and necessary business expenses of the Franchisee, including, without limitation, professional service fees and insurance or bond premiums;
7. advertising commissions deducted by advertising agencies, other than an agency which is an Affiliated Person, before advertising revenues are paid over to the Franchisee;

8. to the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs taken in the ordinary course of business;

9. amounts recovered by Franchisee for theft or loss of portions of the Cable System, such as pedestal boxes, that were previously written off;

10. investment income; and

11. payments received by the Franchisee or an Affiliated Person that represent a reimbursement for work performed by the Franchisee or its agents on behalf of a contractor or third party, where payment for such work would not normally be considered Gross Revenue based on the nature of the work performed.

“Holiday” means a Saturday, Sunday, officially recognized federal or City legal holiday, and any other day on which the City’s offices are closed and not reopened before 4:00 p.m.

“Leased Channel” means a Channel on the Subscriber Network designated by the Franchisee pursuant to Section 612 of the Cable Act (47 U.S.C. § 532).

“Liability” or “Liabilities” means any and all encumbrances, defects of title, easements, mortgages, security interests or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs, conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities, obligations, debts, commitments, undertakings, taxes, covenants, attorneys’ and other fees and responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising or existing by operation of law, by judicial decree or judgment, by contract or otherwise, including, without limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security agreements and conditional sales and other title retention agreements. “Liability” or “Liabilities” shall also mean any damage or loss to any real or personal property of, or any injury to or death of, any Person or the City.

“Non-Cable Service” means any Service which is distributed over the Cable System, other than a Cable Service.

1 “Open Video System” means an Open Video System as defined in Section 653 of the Cable Act (47  
2 U.S.C. § 573) (or any successor thereto) and the rules promulgated pursuant to that section.

3 “PEG Channels” means public Channels, educational Channels, and government Channels  
4 provided by Franchisee under Section 6.2 and shall include leased access Channels provided  
5 pursuant to Section 6.1

6 “PEG User” means a Person authorized to administer or operate a PEG Channel, and shall include  
7 the City. If several Persons share a PEG Channel, each Person shall be a separate PEG User.

8 “Person” shall mean any natural person or any association, firm, partnership, joint venture,  
9 corporation or other legally recognized entity, whether for-profit or not-for-profit.

10 “Public Way” means the surface of, and the space above and below, any public street, highway,  
11 freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or  
12 other public right-of-way, including, but not limited to, public utility easements, dedicated utility  
13 strips, or rights-of-way utilized for compatible uses and any temporary or permanent fixtures or  
14 improvements located thereon now or hereafter held by the City in the Franchise Area, which,  
15 consistent with the purpose for which it was dedicated, may be utilized for the purpose of installing,  
16 operating, repairing, and maintaining the Cable System after negotiation of terms and conditions  
17 mutually satisfactory to the City, the Franchisee, and the appropriate public utility. Public Way also  
18 means any easement now or hereafter held by the City within the Franchise Area for the purpose of  
19 public travel, or for utility or public service use utilized for compatible uses, and shall include other  
20 easements or rights-of-way as shall within their proper use and meaning entitle the City and the  
21 Franchisee to the use for the purposes of installing, operating, and maintaining the Franchisee’s  
22 Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers,  
23 appliances, attachments, and other property as may be ordinarily necessary and pertinent to the  
24 Cable System. Public Way shall not include any City buildings, structures, or other improvements,  
25 regardless of whether they are situated in a public right-of-way.

26 “Region” means Anne Arundel County

27 “Resident” means (i) any occupant who resides in a dwelling in the City, including, without limitation,  
28 occupants of apartment houses, one- and two-family dwellings, apartment hotels, motels, lodging or  
29 rooming houses; or (ii) as otherwise defined by Applicable Law. In the case of any commercial or

1 institutional facility (such as a hotel, a dormitory, a hospital, a nursing home, etc.), the Franchisee  
2 shall negotiate the terms of providing Services to Residents in such institutional facility.

3 "Residential Subscriber" means a Resident who lawfully receives any Service on the Subscriber  
4 Network, except to the extent that such Services are used by the Subscriber in connection with a  
5 trade, business, or profession, either directly or indirectly, unless such use is incidental.

6 "Service" means (i) any Cable Service, including any Basic Service, or any other service, whether  
7 originated by the Franchisee or any other Person, which is offered to any Person in conjunction  
8 with, or distributed over, the Cable System; and (ii) any Non-Cable Service provided for public,  
9 educational, or governmental use.

10 "Service-Related Activity" means any activity or function associated with the production or  
11 distribution of any Service over the Cable System, including, without limitation, the use of studio or  
12 other facilities equipment, billing, audience promotion, or installation or lease of equipment.

13 "Signal" means any transmission of radio frequency energy or of optical information.

14 "Significant Construction" means any major alteration, construction, reconstruction, upgrade, rebuild  
15 or enhancement of the System in the Franchise Area, during the Term of this Agreement or for such  
16 longer time as the Franchisee operates the System, the costs of which are estimated to be more  
17 than Five Million Dollars (\$5,000,000) over a twenty-four month period; but excluding there from any  
18 item not located or occurring within, abutting, or affecting any City property or Public Way.

19 "System" means, subject to Section 13.6 of this Agreement, the Cable System constructed,  
20 operated, and maintained by the Franchisee pursuant to this Agreement, including, without  
21 limitation, all real property, all tangible and intangible personal property, buildings, offices, furniture,  
22 Subscriber lists, cables, wires, amplifiers, and all other electronic devices used in connection with  
23 the Cable System and all rights, contracts, and understandings with regard to any matter related to  
24 the Cable System. In addition, the System shall include any facilities provided by the Franchisee to  
25 the City or for the use of the City as part of the Institutional Network pursuant to the Institutional  
26 Network agreement.

27 "Subscriber" means any Person lawfully receiving any Service provided by the Franchisee by  
28 means of or in connection with the Cable System, whether or not a fee is paid for such Service.

1 “Subscriber Network” means that portion of the Cable System over which Services are provided  
2 primarily to Residential Subscribers.

3 “Term” shall have the meaning set forth in Section 2.2 of this Agreement.

4 “Two-Way” means that the headend, cables, hubs, distribution plant, amplifiers and other technical  
5 components of the Cable System have the requisite equipment in place to pass video, audio, voice  
6 and/or data Signals in both directions simultaneously.

**SECTION 2. GRANT OF AUTHORITY; TERM.**

**2.1 Grant of Franchise.**

A. General. City hereby grants to Franchisee, subject to the terms and conditions of this Agreement and the Franchise grant resolution a non-exclusive Franchise with the right, privilege and authority to construct, operate, repair, maintain, and reconstruct a Cable System on, over, under, upon, across, and along the Public Ways within the Franchise Area in accordance with the City's specifications and this Agreement. The grant of this non-exclusive Franchise is expressly conditioned upon the construction, operation, maintenance, repair, and reconstruction of the Cable System in accordance with the terms of this Franchise. The rights granted hereunder, including, without limitation, rights to utilize the Public Ways, shall not be sold, transferred or assigned without the approval of the City.

B. Compliance with Law. The Franchise granted under the terms and conditions of this Agreement shall be consistent with the Annapolis City Charter, the laws, regulations and rules of the City, and other applicable statutory requirements. In the event of conflict between this Agreement and the terms and conditions on which the City can grant a franchise, the Charter, the laws, regulations and rules of the City, and any such statutory requirements shall control; provided, however, that the terms and conditions of this Agreement may not be affected by any law, regulation, or rule adopted after the Effective Date of this Agreement unless: (1) the content of the law, regulation, or rule was not permitted to be enacted as of the Effective Date, or (2) the law, regulation, or rule is of general applicability.

C. No Waiver of Other Permits and Authorizations. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the City or of the City's right to require the Franchisee or any Person using the Cable System to secure the appropriate permits or authorizations for such use, provided that the fees and charges imposed upon the Franchisee for any such permit or authorization shall be the standard fees or charges generally applicable to all Persons for such permits or authorizations, and any such standard fee or charge: (i) shall not be considered a

1 “franchise fee” under 47 U.S.C. § 542(g)(1); (ii) shall fall within the exception to such  
2 term pursuant to 47 U.S.C. § 542(g)(2)(A); and (iii) shall not be an offset against the  
3 compensation or other payment the Franchisee, an Affiliated Person or other Person  
4 is required to pay the City or any other entity pursuant to Sections 6 and 10 of this  
5 Agreement.

6  
7 D. Closing of Public Ways. Nothing in this Agreement shall be construed as a waiver  
8 or release of the rights of the City in and to the Public Ways. In the event that all or  
9 part of the Public Ways within the Franchise Area are (1) closed to pedestrian  
10 and/or vehicular traffic and/or utilities and services such as Cable Services; or (2)  
11 vacated or if ownership of the land under the affected Public Ways is otherwise  
12 transferred to another Person, all rights and privileges granted pursuant to this  
13 Agreement with respect to such Public Ways, or any part of such Public Ways so  
14 closed, vacated, or transferred, shall cease upon the effective date of such closing,  
15 vacation, or transfer, and Franchisee shall remove its Cable System from such  
16 Public Ways. If such closing, vacation, or transfer of any Public Way is undertaken  
17 for the benefit of any private Person, the City shall, as appropriate, condition its  
18 consent to such closing, vacation, or transfer of such Public Way on the agreement  
19 of such private Person to: (i) grant the Franchisee the right to continue to occupy  
20 and use such Public Way; or (ii) reimburse the Franchisee for its reasonable costs to  
21 relocate the affected part of the Cable System. The City shall provide reasonable  
22 prior notice to Franchisee of any such closing, vacation, or transfer to allow  
23 Franchisee to remove its Cable System where the right to continue to occupy and  
24 use such Public Way is not reserved for Franchisee.

25  
26 2.2 Term of Franchise.

27  
28 Conditions Precedent. The Franchise shall commence upon the Effective Date,  
29 provided that the Franchisee shall have met each of the conditions precedent set  
30 forth below and otherwise in this Agreement (unless the City agrees to waive any of  
31 the conditions precedent), at which time it shall become effective for a period of ten  
32 (10) years:  
33



1                   1.     Council Action. All necessary approvals of this Agreement by the City shall  
2                             have been obtained.  
3  
4

5     2.3     Renewal. Any renewal of this Franchise shall be governed by and comply with the  
6     provisions of Applicable Law.  
7

8     2.4     Reservation of Authority. Nothing in this Agreement shall abrogate the right of the City to  
9     perform any public works or public improvements of any description or be construed as a waiver of  
10    any codes or ordinances of general applicability promulgated by the City, or be construed as a  
11    waiver or release of the rights of the City in and to the Public Ways. In the event that the Cable  
12    System interferes with the construction, operation, maintenance or repair of such public works or  
13    public improvements, the Franchisee shall, at its own cost and expense, protect or promptly alter or  
14    relocate the Cable System as directed by the City. In the event that Franchisee refuses or neglects  
15    to so protect, alter or relocate all or part of the Cable System, or in the event of fire, disaster or  
16    other emergency, the City shall have the right to break through, remove, alter or relocate, without  
17    notice to Franchisee, all or part of the Cable System and the Franchisee shall pay to City the costs  
18    incurred in connection with such breaking through, removal, alteration or relocation. In the event  
19    that the City or any public or quasi-public entity reimburses costs for other occupants of the Public  
20    Ways which this Section 2.4 imposes on the Franchisee, it will not be a breach of this Agreement  
21    for the Franchisee to request that the City or such public or quasi-public entity, as the case may be,  
22    bear some or all of the Franchisee's costs.  
23

24    2.5     Competitive Equity.  
25

26           A.     Other Cable Franchises. The Franchisee enters into this Agreement with the  
27                   understanding and on the representation that the City shall act fairly and reasonably  
28                   in the event that, pursuant to the Cable Act, the City, subsequent to the Effective  
29                   Date of this Agreement, grants, renews or renegotiates one (1) or more other  
30                   franchises for the operation of a Cable System in the Franchise Area ("Other Cable  
31                   Franchise"). To the extent the City does not have lawful authority over the relevant  
32                   benefits and burdens described in the following paragraph, the term "Other Cable  
33                   Franchise" as used in this Section 2.5 shall not include municipally-owned Cable

Systems or Open Video Systems, video dialtone systems or similar systems.

B. Request for Review by Franchisee. If the Franchisee believes the agreement pursuant to which such Other Cable Franchise may be granted (hereinafter the "Other Cable Franchise Agreement") bestows benefits and imposes burdens on the Franchisee which, as an economic or operational matter, on balance, are materially more advantageous to such third party than the benefits bestowed and burdens imposed on the Franchisee by this Agreement are to the Franchisee, then, at any one (1) time but not sooner than the effective date of the Other Cable Franchise or later than eighteen (18) months after the effective date of the Other Cable Franchise, the Franchisee may request that the City make a determination to such effect; in the event of such a determination, the Franchisee may request renegotiation of the terms and conditions of this Agreement as provided below. The discharge in bankruptcy of any obligations of the Other Cable Franchise Agreement shall not be a basis for the Franchisee to request such a determination.

C. Procedure.

1. In the event of such a request, the City shall determine within sixty (60) Days whether the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, as an economic or operational matter, on balance, are materially more advantageous to the third party than the benefits and burdens imposed by this Agreement are to the Franchisee. The Franchisee may submit to the City a written statement of those factors it believes to be relevant to such inquiry.
2. If the City determines that the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this Agreement are to the Franchisee, then upon the Franchisee's request, the City and the Franchisee shall enter into good faith negotiations to modify this Agreement to bestow benefits and impose burdens which, on balance, create overall economic comparability between this Agreement and the Other Cable Franchise Agreement.

1

2

**SECTION 3. CONSTRUCTION STANDARDS.**

**3.1 General Requirement.** Throughout the Term, and for such other time as it may take the Franchisee to remove the System pursuant to Section 13 of this Agreement, the Franchisee shall comply with the terms, conditions, and provisions set forth in this Section, and all other requirements or procedures pertaining to construction and technical requirements that are specified by the City or Applicable Law.

**3.2 Standards and Specifications.**

A. Compliance with Standards and Specifications. The Franchisee shall meet or exceed all construction and service requirements required by this Agreement, the Annapolis City Code, and Applicable Law. All work involved in the construction, operation, repair, maintenance, Upgrade, Significant Construction, rebuild, enhancement, and removal of the System shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Franchisee shall comply with applicable codes and industry standards including the National Electrical Code, as adopted by the City from time to time; the National Electrical Safety Code, as adopted by the City from time to time; all rules, standards, practices, and procedures of the FCC and National Cable Television Association, as amended from time to time; and the requirements of other utilities whose poles and conduits the Franchisee uses, as amended from time to time, and the City of Annapolis Standard Specifications and Construction Details (as amended from time to time).

B. Antennas and Towers. Antenna supporting structures and towers shall be designed for the proper loading as specified in Electronic Industry Association's R.S. 222-C Specifications. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Law.

1 C. Plant and Equipment. The Franchisee's plant and equipment, including, without  
2 limitation, the antenna and satellite earth station sites, headend and distribution  
3 system, towers, house connections, structures, poles, wire, cable, coaxial cable,  
4 fixtures, and appurtenances shall be installed, located, erected, constructed,  
5 reconstructed, replaced, removed, repaired, maintained, and operated in  
6 accordance with good engineering practices and in accordance with the City of  
7 Annapolis Standard Specifications and Construction Details, performed by  
8 experienced and properly trained maintenance and construction personnel, so as  
9 not to endanger or interfere with improvements made by the City, interfere in any  
10 manner with the rights of any property owner, or unnecessarily hinder or obstruct  
11 pedestrian or vehicular traffic on any Public Way.

12  
13 D. Correction of Harmful or Unsafe Conditions. If, at any time, the City or any other  
14 agency or authority of competent jurisdiction determines that, consistent with  
15 Applicable Law or standards, any part of the System, including, without limitation,  
16 any means used to distribute Signals over or within the System, is harmful to the  
17 health or safety of any Person, the City shall notify the Franchisee of the  
18 circumstances and the Franchisee shall then, at its sole cost and expense, within a  
19 reasonable time period specified by the City or such agency or authority, correct all  
20 such conditions. The Franchisee shall promptly notify CITY and the Directors of  
21 DPW, DOT, and DNEP of any determination or finding by an agency or authority of  
22 competent jurisdiction that any part of the System is harmful to the health or safety  
23 of any Person, and in no event later than twenty-four (24) hours after receiving  
24 notice of such a determination or finding.

25  
26 E. No Obstruction. The Franchisee shall not obstruct the Public Ways, subways,  
27 railways, passenger travel, river navigation, or other traffic to, from, or within the  
28 Franchise Area without the required permits from and the prior consent of the City  
29 and all other appropriate public or private authorities.

30  
31 3.3 Licenses and Permits. The Franchisee shall be solely responsible for obtaining, at its  
32 sole cost and expense, all permits, licenses, including but not limited to construction bonds, and  
33 other forms of approval or authorization necessary to construct, operate, maintain, repair, Upgrade,

1 perform Significant Construction to, rebuild, enhance, or remove the System, or any part of the  
2 System, prior to the commencement of any such activity. In the event of an emergency which  
3 poses a serious risk to life or public safety, the Franchisee may carry out any work necessary to  
4 eliminate the emergency to the extent consistent with Applicable Law. Any blanket permit issued by  
5 the City to the Franchisee shall only authorize the Franchisee to perform everyday maintenance  
6 and emergency repair. If, during the performance of any work authorized by a blanket permit,  
7 Franchisee performs any work in the Public Ways that is not authorized by the blanket permit,  
8 Franchisee shall file for all required permits no later than the following Business Day.  
9

10 3.4 Right of Inspection. The City shall have the right to inspect all construction and installation  
11 work performed subject to the provisions of this Agreement and to conduct such tests as it deems  
12 necessary to ensure compliance with this Agreement and Applicable Law; provided, however, that  
13 such inspection and tests shall not interfere with the provision of Services. Any delays in  
14 construction due to such inspections shall not be reason for default.  
15

16 3.5 New Grades or Lines. If the grades or lines of any Public Way are changed at any time  
17 during the Term of this Agreement, then the Franchisee shall, at its sole cost and expense and  
18 within ten (10) Days after actual or constructive notice from the City, or within such longer time  
19 period as may be reasonably requested by the Franchisee, protect, alter, or relocate the System, or  
20 any part of the System, so as to conform with the new grades or lines. In the event that the  
21 Franchisee refuses or neglects to so protect, alter, or relocate all or part of the System within the  
22 time period specified by this Section 3.6, the City shall have the right to break through, remove,  
23 alter, or relocate all or any part of the System without any Liability of the City to the Franchisee, and  
24 the Franchisee shall pay to the City the costs incurred in connection with such breaking through,  
25 removal, alteration, or relocation.  
26

27 3.6 Movement of Cables, Wires, and Other Equipment. The Franchisee shall, upon written  
28 notice delivered not less than ten (10) Days in advance by the City or any Person holding a permit  
29 that authorizes an activity (including, but not limited to, movement of a structure) that requires  
30 movement of cables, wires, or other equipment, move its cables, wires, and other equipment to  
31 allow the permitted activity to be completed in a timely manner. The franchisee may impose a  
32 charge.  
33

1 3.7 Emergency Removal. If, at any time, in case of fire or other disaster, the Mayor or the  
2 Mayor's designee determines that it is necessary to cut or remove any part of the Cable System,  
3 the City may cause such cutting or removal. The Franchisee shall not charge the City for any  
4 restoration or repair resulting from such cutting or removal.  
5

6 3.8 Notices of Construction. The Franchisee shall provide advance notice of construction that  
7 involves entry into or the crossing of any private property, work in streets abutting private property,  
8 or Public Ways. The Franchisee shall provide at least thirty-six (36) hours advance notice to all  
9 affected property owners by telephone, in person, by mail, by distribution of flyers to buildings, by  
10 publication in local newspapers, or in any other manner reasonably calculated to provide adequate  
11 notice, unless exigent circumstances prevent thirty-six (36) hours advance notice, in which event  
12 the Franchisee shall provide such notice as is practicable under the circumstances. In addition,  
13 before entering onto any Person's property, the Franchisee shall provide prior notification and  
14 obtain the property owner's or, in the case of residential property, the resident's permission, where  
15 possible.  
16

17 3.9 Protection of Public Property and Landmarks.  
18

19 A. The Franchisee shall, at its sole cost and expense, protect any and all existing  
20 structures belonging to the City, the federal government, and any other public or  
21 quasi-public entity; all federally and locally designated landmarks and districts, all  
22 other structures within any designated landmark district; and conduit, cables, wires,  
23 and equipment of the City.  
24

25 B. The Franchisee shall not alter, interfere with, or damage any public structure in the  
26 Public Ways or any conduit, cable, wire, or equipment of the City in the Public Ways  
27 without prior approval of the City and all other appropriate authorities. Any such  
28 alteration shall be made by the Franchisee, at no cost or expense to the City or such  
29 other appropriate authorities, and in a manner reasonably prescribed by the City and  
30 all other appropriate authorities. For other replacements, repairs, and restorations,  
31 the Franchisee agrees that it shall be liable, at no cost or expense to the City or  
32 such other appropriate authorities, to replace or repair and restore, in a manner and  
33 within a reasonable time period as specified by the City and all other appropriate

1 authorities, any Public Ways, public structure, or conduit, cable, wire, or equipment  
2 of the City involved in the construction, operation, maintenance, repair, Upgrade,  
3 Significant Construction, enhancement, rebuild, or removal of the System that is  
4 disturbed or damaged as a result of any work by or on behalf of the Franchisee  
5 pursuant to this Agreement.

6  
7 C. In the event the City or other appropriate authorities do not specify the manner of  
8 replacement, repair, or restoration, the Franchisee shall replace, repair, or restore  
9 the Public Ways, public structure, or any conduit, cable, wire, or equipment of the  
10 City within thirty (30) Days, to good condition consistent with industry standards and  
11 the requirements of the standards and specifications of Section 3.2A.

12  
13 D. If Franchisee fails to make such repairs within the time specified by City, the City,  
14 upon notice to the Franchisee, shall have the right to make the repairs or cause the  
15 repairs to be made. The Franchisee shall reimburse the City for the costs incurred  
16 for such repairs and the City shall have the right to pursue any other remedies  
17 provided by this Agreement and Applicable Law.

18  
19 E. In the event the Franchisee refuses or neglects to replace, repair, or restore any  
20 Public Way, public structure, or conduit, cable, wire, or equipment of the City, the  
21 City shall have the right to replace, repair, or restore such Public Way, structure, or  
22 conduit, cable, wire, or equipment of the City. The Franchisee shall reimburse the  
23 City for the costs incurred in connection with such replacement, repair, or  
24 restoration, including, without limitation, any costs incurred for the inspection of the  
25 altered or damaged property.

26  
27 F. The Franchisee shall guarantee and maintain all repairs, replacement, and  
28 restoration for at least one year after completion against defective materials and  
29 workmanship.

30  
31 3.10 Pavement Cut Coordination. The Franchisee, at the City's request, shall meet with the  
32 Directors of the DPW and the DOT at least twice per year to coordinate its construction program  
33 and all other work in the Public Ways with the City's program for water main, storm and sanitary



sewer, sidewalk and street construction, rebuilding, and resurfacing (collectively, "Street Construction"). The goals of such coordination shall be to require the Franchisee to conduct all work in the Public Ways in conjunction with or immediately prior to any Street Construction planned by the City

3.11 Safety Precautions.

A. Standard of Care. The Franchisee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Franchisee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites. The Franchisee shall comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§ 651-78), as amended, and all other Applicable Law.

B. Protection of Construction Areas. The Franchisee shall comply with the safety requirements of all permits, licenses, and other forms of approval or authorization. In addition, Franchisee shall maintain reasonable barriers, lights, signs, cones, and other similar warnings and protective devices required for the safety of the public in compliance with this Agreement and Applicable Law. If the Franchisee places any such device in any Public Way, the device shall be placed and maintained in a way that does not interfere with the usual travel or other existing and anticipated uses of the Public Way.

C. Emergency Notification. The Franchisee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Franchisee, not voice mail or a recording, can be contacted in the event of an emergency.

D. Identification. The Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. The identification document shall include a telephone number that can be used for verification. In addition, the Franchisee shall clearly identify all personnel, vehicles, and other major equipment operating under its authority.

3.12 No Interference with Facilities or Equipment.

A. The Franchisee shall not alter, interfere with, or damage the existing conduit system, cables, wires, or equipment of any Person other than the Franchisee, including but not limited to utilities, other Cable Systems Open Video Systems, master antenna systems, satellite master antenna systems, and similar systems.

B. If a final court decision, not subject to further appeal, concludes that the Franchisee altered, interfered with, or damaged the existing conduit system, cables, wires, or equipment of the City or any Person, other than the Franchisee, and if the City finds that (i) the Franchisee willfully interfered in a grossly material fashion with the operations of another Cable Service provider; or (ii) the court decision, considered with other interference by the Franchisee, establishes a pattern of interference by the Franchisee, then the City may consider whether the court decision constitutes a breach of this Agreement under Section 13.

C. This Section 3.12 is intended to address the normal installation, repair, and maintenance practices of the Franchisee and is not intended to prohibit the Franchisee from taking any action that is consistent with Applicable Law to remove, use, or dispose of the facilities of another Cable Service provider.

3.13 Trimming of Trees and Vegetation.

A. The Franchisee, at its sole cost and expense, may trim trees and other natural vegetation upon and overhanging any Public Way when necessary to prevent such trees and vegetation from coming into contact with the Cable System, provided, however, that all trimming in any Public Way shall only be performed with the prior approval, and under the direction, of the DNEP and consistent with Chapter 14.12 of the City Code.

B. The Franchisee shall obtain the prior written consent of the property owner for all trimming of trees on private property.

- 1
- 2 C. No trimming shall be done by the Franchisee until the time of installation of any wires,
- 3 cables, or other fixtures to the relevant portions of the Cable System in order to
- 4 ensure that the tree is trimmed to the minimum extent necessary.
- 5
- 6 D. The Franchisee shall be responsible for any damage caused by such trimming and
- 7 shall dispose of all trimmed materials on a daily basis.
- 8

9 3.14 Aerial and Underground Construction.

10

- 11 A. If all of the transmission and distribution facilities of all of the respective public or
- 12 municipal utilities in any part of the Franchise Area are underground, the Franchisee
- 13 shall place its transmission and distribution facilities underground. In any region(s) of
- 14 the Franchise Area where the transmission or distribution facilities of the respective
- 15 public or municipal utilities are both aerial and underground, the Franchisee shall
- 16 have the discretion to construct, operate, and maintain all of its transmission and
- 17 distribution facilities, or any part of such facilities, aerially or underground, provided,
- 18 however, that previously installed aerial cable shall be undergrounded in concert and
- 19 on a cost-sharing basis with affected utilities when such utilities convert from aerial to
- 20 underground construction and when Franchisee is given reasonable prior notice of
- 21 such undergrounding.
- 22
- 23 B. In cases of new construction or property development where utilities are to be placed
- 24 underground, the developer or property owner shall give the Franchisee notice of at
- 25 least thirty (30) Days before commencing such construction or development. The
- 26 notice shall indicate the date on which open trenching will be available for the
- 27 Franchisee's installation of conduit, pedestals, vaults, and laterals, all of which shall
- 28 be provided at Franchisee's expense. Upon request of the developer or property
- 29 owner, the Franchisee shall provide specifications for the trenching. The costs of the
- 30 trenching and the easements required to facilitate Cable Service to the development
- 31 shall be borne by the developer or property owner, provided however, that, if
- 32 Franchisee fails to install its conduit, pedestals, vaults, and laterals within ten (10)
- 33 Days after the date the trenches are available, as designated in the notice given by

1 the developer or property owner, then the cost of any new trenching necessary shall  
2 be borne by the Franchisee. Except for the notice of the date on which open  
3 trenching will be available to the Franchisee, any notice provided to the Franchisee by  
4 the City of a preliminary plat request shall satisfy the requirement of notice if sent to  
5 the General Manager of Franchisee prior to the City's approval of the preliminary plat  
6 request.

7  
8 C. Any portion of the Cable System installed underground shall be buried to a depth of at  
9 least sixteen (16) inches; provided, however, that any portions of the Cable System  
10 installed under Public Ways shall be buried to a depth of at least twenty-four (24)  
11 inches and all Drops shall be buried to a depth of at least twelve (12) inches.

12  
13 D. If, at any time in the future, the City requires that the utilities in all or any portion of the  
14 City place their lines underground, then the Franchisee shall, at its sole cost and  
15 expense, and within a reasonable period of time, place its existing and all future  
16 cable, wires, or other equipment underground in such portion of the City without  
17 charge, expense, or liability therefore to the City.

18  
19 E. Franchisee shall be entitled to compensation for expenses incurred from any  
20 relocation and/or underground placement of cable, wires, or other equipment  
21 performed at the direction of the City to the extent that other users of the Public  
22 Ways are so compensated.

23  
24 3.15 Open Conductors And Sheathing. Open conductors shall conform to the National  
25 Electrical Safety Code, as adopted by the City from time to time, regarding minimum clearances.  
26 As of the Effective Date, such minimum clearances are as follows:

27  
28 A. Ten (10) feet above finished grade, sidewalks, or from any platform or projection  
29 from which they might be reached at locations where there is no vehicular traffic.

30  
31 B. Sixteen (16) feet over public streets, roads, alleys, and driveways that are subject to  
32 vehicular traffic.  
33

C. Twenty-four (24) feet over track rails of railroads.

3.16 Poles and Facilities.

Use of Existing Poles and Facilities Preferred. Franchisee shall use, with the owner's permission, existing poles, conduits, and other facilities whenever Economically and Technically Feasible and Viable. The Franchisee may not erect poles, conduits, or other facilities in any Public Way without all necessary permits and authorizations and the express permission of the City. Upon request, the Franchisee shall file copies of all agreements for the use of conduits or other facilities with the City within fifteen (15) Business Days.

3.17 Map Accuracy. The City does not guarantee the accuracy of any maps, prints, atlases, illustrations, drawings, or other pictorial or computer-generated materials showing the horizontal or vertical location of existing substructures. All locations of other utilities and facilities in the Public Ways and easements used by the Franchisee shall be verified by excavation or by requesting "locates" from the City.

**SECTION 4. SERVICE OBLIGATIONS.**

**4.1 Service to All Persons.**

A. General Obligation. Throughout the Term of this Agreement, the Franchisee covenants and agrees to construct, operate, repair, maintain, reconstruct, and upgrade the System so as to provide access to all Services (Cable and Non-cable) distributed over the Subscriber Network to any Person within the Franchise Area who submits a request for Services to the Franchisee. The Franchisee shall provide such access within the time periods and subject to the procedures described in Section 4.2. It shall be the right of all Persons to receive all available Services provided on the Cable System so long as such Person's financial and other obligations to the Franchisee are satisfied.

**4.2 Requests for Service.**

A. Multiple Dwelling Unit Subscribers.

1. General. Provided that the Franchisee is able to obtain access to the building in accordance with this Section to perform the necessary work, the Franchisee shall fulfill all requests for Services, including any upgrades to inside wiring necessary to transmit the full range of its Services for Residential Subscribers living in multiple dwelling unit buildings, within the time periods set forth in Applicable Law. The Franchisee shall diligently pursue access to all buildings containing Residents that are not currently wired for Residents to receive any Services from the Franchisee.

B. Drops.

1. General Service Obligation. Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least twenty (20) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within 300 feet of the Franchisee's distribution cable. Franchisee may elect to provide Cable Service to areas

not meeting the above density and distance standards. Franchisee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

2. Location. Whenever technically possible, Franchisee shall meet each Subscriber's desire regarding the point at which the Drop enters the Subscriber's residence or other structure, and the point at which the Drop terminates inside the structure. Drops shall be placed underground whenever other utilities are located underground.

3. Removal Upon Termination. Upon the termination of Service, Franchisee shall either entirely remove its Drop or secure the Drop in a method reasonably acceptable to City or Subscriber.

4. Non-obstructive and Unobtrusive Locations. All cable within buildings and all Drops outside buildings shall be located so as to be as non-obstructive and unobtrusive as practicable.

4.3 Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Franchisee, any Cable Service, program, or signal transmitted over the Cable System by the Franchisee.

Signal Leakage. Franchisee may disconnect a Subscriber who causes signal leakage in excess of federal limits. Franchisee may disconnect a Subscriber without notice where signal leakage is detected originating from the Subscriber's premises in excess of federal limits, provided the Franchisee shall immediately notify the Subscriber of the problem, and, once the problem is corrected, reconnect the Subscriber.

4.4 Residential Subscribers Served Under Bulk Agreements. The Franchisee may enter into or maintain any "bulk rate" agreements permitted under Applicable Law. With respect to Residential

1 Subscribers who receive Services under such bulk rate agreements, the Franchisee shall permit  
2 CITY to exercise its responsibilities under this Agreement to such Subscribers in a manner  
3 comparable to the way in which it exercises its responsibilities with respect to other Residential  
4 Subscribers.

5 4.5 Continuity of Service. Franchisee shall operate the Cable System and provide Cable  
6 Service twenty-four (24) hours per Day, seven (7) Days per week. Franchisee shall voluntarily  
7 interrupt the provision of Cable Service only with good cause and for the shortest time possible and,  
8 except in emergency situations, or as otherwise provided in this Agreement, only after periodically  
9 cablecasting notice of the service interruption, including at the same time of day as the anticipated  
10 interruption. Service may be interrupted without notification between 12:00 a.m. and 6:00 a.m. for  
11 routine testing, maintenance, and repair, on any night except Friday, Saturday, or Sunday, or any  
12 night preceding a Holiday.

13 4.6 Classification of Cable Modem Service.

14 A. Acknowledgement. The City and Franchisee acknowledge that: (i) on March 15,  
15 2002, the FCC released a declaratory ruling that cable modem service is not a cable  
16 service within the meaning of Section 602(6) of the Cable Act (47 U.S.C. § 153(20));  
17 (ii) the declaratory ruling has been appealed in the federal courts, the Ninth Circuit  
18 has determined that cable modem service is both an information service and a  
19 telecommunications service (*Brand X Internet Services v. Federal Communications*  
20 *Commission*, Docket No. 02-70518, 2003 WL 22283874 (9th Cir. 2003), and the  
21 matter will be subject to additional proceedings; and (iii) on March 15, 2002, the  
22 FCC also issued a notice of proposed rulemaking seeking comment on the  
23 regulatory implications of the declaratory ruling and will issue rules pursuant to the  
24 notice of proposed rulemaking which may be subject to yet further proceedings.

25 B. Reservation Rights. Notwithstanding Section 11.2 of this Agreement, the City and  
26 the Franchisee each reserve, to the fullest extent, their respective rights arising from  
27 (i) the FCC March 15, 2002 declaratory ruling; (ii) any subsequent proceedings,  
28 including, but not limited to, judicial, legislative, and administrative proceedings,  
29 relating to the declaratory ruling; (iii) the notice of proposed rulemaking; and (iv) any  
30 subsequent proceedings, including, but not limited to, any rules and requirements



1 and any judicial, legislative, and administrative proceedings relating to such  
2 rulemaking.

3 4.7 Ownership of Installed Wiring. Ownership of all wiring installed by Franchisee inside  
4 Subscribers' dwellings plus that extending on the outside of Subscribers' dwellings plus any such  
5 further length of cable extending beyond the exteriors of Subscribers' dwellings shall be determined  
6 as required by FCC requirements (76 C.F.R. §76.800 *et seq.*) and other Applicable Law.  
7

**SECTION 5. CABLE SYSTEM FACILITIES, EQUIPMENT, AND SERVICES.**

5.1 Cable System Design and Capacity; Technical Performance. Throughout the Term of this Agreement, the Franchisee shall operate and maintain the Cable System in accordance with Applicable Law and this Agreement.

5.2 Signal Quality and Security. Franchisee shall provide to the Subscribers a level of signal quality emanating from the headend that meets or exceeds FCC technical standards. The Cable System shall have the means for users to acquire signal security for selected channels and subchannels, such as the current methods of analog scrambling, tier filters, individual Channel trapping, Channel blocking via the customer set-top box and digital encryption and such future methods as may be developed from time to time.

5.3 Leased Services. The Cable System shall comply with all Applicable Law regarding the requirement to provide Leased Channels on the Cable System.

5.4 Interactive Services/Two-Way Cable Modem Service. The Upgrade of the Cable System in the Franchise Area has been completed. Each node service area is Two-Way capable, which shall allow for the capability to deliver interactive Services, including Two-Way cable modem service. The Franchisee shall comply with Applicable Law pertaining to competitive access to its Cable System for the provision of Internet access Services.

5.5 Audio Services. The Cable System offers a wide variety of audio services. The System shall be capable of transmitting secondary audio programming (SAP).

5.6 Digital Television Programming. The System shall provide no fewer than two hundred (200) digital Channels. Examples of such Digital Services may include pay-per-view programs, premium Channels and special interest programming.

5.7 Signals/Channels.

Services. The Franchisee shall carry Services, including local commercial television broadcast signals, in accordance with Applicable Law. The Franchisee shall endeavor to

offer to all Subscribers a diversity of Services. The Franchisee shall provide to the City a listing of all Services it offers to Subscribers and the rates.

5.8 Parity with Neighboring Jurisdictions. If the Franchisee or an Affiliated Person provides a new Cable Service on a commercially deployed basis in the Region, then the Franchisee, within thirty-six (36) months, shall provide such Cable Service and to the extent permitted by applicable law non-cable services on the System unless the Franchisee reasonably determines and demonstrates in writing to the City that doing so would not be Economically and Technically Feasible and Viable. Nothing in this Section 5.8 shall require identity of programming throughout the Region.

5.9 Testing Vehicle and Equipment. The Franchisee shall have available to it, at all times and in good working order, in the Franchise Area:

1. all necessary testing and monitoring equipment;
2. any other equipment necessary to monitor the performance of the Cable System (including any upgrades to the testing and monitoring equipment); and
3. one (1) or more motor vehicles collectively capable of containing and having all such equipment installed therein promptly, and which shall be used for the purpose of such tests.

5.10 System Bandwidth and Capacity.

A. Downstream. The Upgraded System shall have a Downstream bandwidth of at least eight hundred eight (808) MHz from fifty-two (52) MHz to eight hundred sixty (860) MHz. The Downstream bandwidth shall be allocated between Analog Channels and Digital Services, and this allocation may change over time.

B. Upstream. The Upstream bandwidth shall be thirty-five (35) MHz, from five (5) MHz to forty (40) MHz. This bandwidth will be used for digital Signals. The Franchisee anticipates accommodating any analog video Signals on routes other than the Upstream bandwidth.

1  
2 5.11 Emergency Override. The Franchisee shall comply with the Emergency Alert System ("EAS")  
3 requirements set forth in 47 C.F.R. Part 11 (or any successor thereto).

4

**SECTION 6. PUBLIC SERVICES.**

6.1 Leased Access. Franchisee shall make available suitable Channel capacity for leased access by third parties not Affiliated with Franchisee to the extent from time to time required by federal law and regulations. Franchisee shall have the sole responsibility for all operating aspects and for the fixing of rates and conditions for leased access use.

6.2 Provision of PEG Channels.

A. Franchisee to Provide. Franchisee shall provide one PEG Channel at no charge on the Cable System, as specified in this Agreement. The Channel shall be available twenty-four (24) hours per Day throughout the Term of this Agreement at no cost to Subscribers, City, or PEG Users. The PEG Channels shall be in addition to any capacity provided on the Institutional Network.

B. Location. The PEG Channel shall be placed on the basic tier of service (and in the lowest tier of service, if different), shall be available to all Subscribers and can be in either analog (6 MHZ NTSC) or digital format..

C. Editorial Control. Franchisee shall not exercise any editorial control over any use of PEG Channel capacity or the content of programming on the PEG Channel (except for such programming as the Franchisee may produce or provide for its account), nor shall Franchisee or its Affiliates incur any liability under this Agreement for any PEG programming carried on any PEG Channel.

6.3 Capital Support For Equipment and Facilities For PEG Channels. Franchisee shall pay to the City, for capital costs, including, without limitation, facilities and equipment, ongoing support of fifty cents (\$.50) per Subscriber per month, for the Term of this Franchise Agreement, or so long as Franchisee is providing Cable Service in the City, whichever is longer. This per-Subscriber grant shall be computed and paid in the same manner and on the same schedule as the Franchise Fees, and shall be subject to the right of the City to inspect, audit, and re-compute in the same manner as for Franchise Fees.

Franchisee and City agree that the obligations set forth in this Section are not "franchise fees"

1 within the meaning of 47 U.S.C. §542.

2 6.4 Services to Public Office Buildings. The Grantee shall, upon request, provide without  
3 charge, one outlet of Basic Service to all public office buildings, fire station(s), police station(s), and  
4 public school building(s) and any other building designated by the City that are passed by the  
5 Franchisee's Cable System. The outlets of Basic Service shall not be used to distribute or sell  
6 services in or throughout such buildings, nor shall such outlets be located in common areas open to  
7 the public. Users of such outlets shall hold the Franchisee harmless from any and all liability or  
8 claims arising out of their use of such outlets, including but not limited to, those arising from  
9 copyright liability. The Franchisee shall not be required to provide an outlet to such buildings where  
10 the drop line from the feeder cable to said building or premises exceeds 200 cable feet unless the  
11 appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of  
12 200 cable feet. If additional outlets of Basic Service are provided to such buildings, the building  
13 owner shall pay the usual installation and service fees associated therewith, including, but not  
14 limited to, labor and materials.

15  
16 6.5 Cable Modem Service to Fire Stations. At the City's request and no later than six months  
17 from the Effective Date of this Agreement, Franchisee will provide up to three cable modems for use  
18 by fire stations. The Franchisee will install such modems, including the inside wiring necessary to  
19 connect the modems to the cable drop and maintain the connection to the headend without charge.

20  
21 6.6 Institutional Network. The parties have entered into a separate agreement entitled "I Net  
22 Agreement." The Franchisee shall comply with all requirements of that agreement.

23  
24 6.7 Studio Grant. The Franchisee shall provide a one time capital grant in the amount of  
25 \$50,000 toward the cost of equipment for a studio for use by the City. The Franchisee will provide  
26 this grant within ninety days of notice from the City that a studio appears in the City's capital budget  
27 and the design process has been initiated.

28

**SECTION 7. EMPLOYMENT AND PURCHASING.**

7.1 Equal Employment Opportunity. Franchisee shall comply in all respects with Federal, state and local equal employment opportunity ("EEO") and non-discrimination laws and regulations including, but not limited to, the FCC's EEO rules set forth at 47 C.F.R. § 76.75 *et seq.*, and Article 4, Section 3-1 of the Annapolis City Code. Franchisee shall make rigorous efforts to develop a workforce with minority representation at all levels.

7.2 Compliance. Franchisee shall ensure that the requirements of Section 7 are adhered to by any Affiliated Person or contractor or subcontractor that is regularly performing functions on the System.

**SECTION 8. FEES AND CHARGES.**

**8.1 General Requirement.**

Compliance with Law. Each fee, charge, deposit, or associated term or condition imposed by the Franchisee or any Affiliated Person for:

- A. any equipment, installation, or other activity subject to Section 623 of the Cable Act (47 U.S.C. § 543) (or any successor thereto) and the rules and regulations issued in connection therewith, or
- B. any Service, shall be consistent with the requirements of such provision and of any other Applicable Law.

**8.2 No Discrimination.**

A. General. Except to the extent otherwise permitted by any Applicable Law (and with the City's approval, where the City is exercising such authority pursuant to Applicable Law), the Franchisee shall not discriminate among Subscribers with respect to fees, charges, deposits, and other terms and conditions affecting any Service, or any equipment, installation, or any other activity subject to regulation under Section 623 of the Cable Act (47 U.S.C. § 543) (or any successor thereto) and the rules and regulations issued in connection therewith. All such fees, charges, deposits, and other terms and conditions must be applied fairly and uniformly to all Subscribers in the Franchise Area.

B. Exceptions. Nothing contained in this Section shall prohibit the Franchisee from offering, to the extent permitted by any Applicable Law:

- 1. discounts to senior citizens or economically disadvantaged groups;
- 2. different charges for Residential Subscribers than for Non-Residential Subscribers;
- 3. sales promotions and other discounts or reduced charges for a reasonable period of time, which are offered to all Residential Subscribers for the same



length of time, although the start date of such promotions, discounts, or reduced charges may be staggered;

4. sales promotions and other discounts or reduced charges for a reasonable period of time, which are offered to a discrete class of Subscribers which may affect the fees, charges, deposits, and other terms and conditions for such Subscribers;

5. bulk rates; or

6. other special, short-term discounts or reduced charges to identifiable classes of Subscribers or potential Subscribers for reasonable categories of Service.

D. Refusal of Service. Franchisee may refuse to provide Service to any Person for demonstrable reasonable cause, including, but not limited to, due or owing accounts between such Person and Franchisee, theft of Service, or theft of or vandalism to Franchisee property.

8.3 Service to Disabled Subscribers. The Franchisee shall comply with all applicable FCC rules related to provision of Service to disabled Subscribers.

8.4 Subsequent Changes. To the extent that any Applicable Law may in the future permit the City to regulate fees, charges, deposits, and the terms and conditions with respect thereto, the City shall not be estopped or prevented from so doing by any provision of this Agreement.

**SECTION 9. CUSTOMER SERVICE STANDARDS, CUSTOMER BILLS, AND PRIVACY PROTECTION.**

9.1 Consumer Protection Standards. The Franchisee shall comply in all respects with all applicable customer service and consumer protection requirements set forth in Applicable Law. Franchisee must maintain records and documentation sufficient to show compliance with all applicable customer service and consumer protection standards. Furthermore, Franchisee shall provide to the City quarterly reports detailing escalated customer complaints.

9.2 Customer Bills. Bills sent by the Franchisee to the Subscriber for Cable and Non-Cable Services are to be clear, concise, and understandable. All bills shall be fully itemized and clearly delineate all activity during the billing period, including dates of service being billed, optional charges, rebates, and credits. The Franchisee must include on Subscriber bills the information required by Applicable Law.

9.3 Privacy Protection. The Franchisee shall comply with Section 631 of the Cable Act (47 U.S.C. § 551), FCC rules and regulations concerning Subscriber privacy, and any other Applicable Law or regulation pertaining to Subscriber privacy.

9.4 Offices. Franchisee shall maintain at least one (1) office at an accessible location within the City of Annapolis. These offices shall be open during normal business hours, as that term is defined in 76.309 of the FCC's rules, to allow Subscribers to request service, pay bills and conduct other business. In addition, the Grantee shall maintain no fewer than two telephone lines dedicated exclusively to the handling of Subscribers' complaints, which telephone lines shall be fully identified on Subscriber's monthly bills and operational twenty four (24) hours per day, seven (7) days per week.

9.5 Service Interruptions.

General. The Franchisee shall render efficient Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the Cable System. Franchisee shall comply with all applicable technical standards of

the FCC as published in subpart K of 47 C.F.R. §76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to FCC's rules.

9.6 Service Complaints.

Response Time. Franchisee shall maintain an adequate force of repair technicians. Franchisee shall respond to Subscriber service complaints, problems, and Cable System outages in accordance with Applicable Law. No charge shall be made to a Subscriber for this service, unless the malfunction is the fault of the Subscriber or the Subscriber's equipment, which shall be Franchisee's burden to prove. Franchisee shall assure rapid repair of major Cable System outages, or other outages that could affect high priority services such as security systems. If a Subscriber is not satisfied with the resolution of a complaint, the Subscriber shall, upon request, be referred to supervisory-level personnel.

9.7 Information to Subscribers.

A. Franchisee Notice to Subscribers. At the time an installation agreement is signed, the Franchisee shall furnish to each Subscriber a written statement that clearly sets forth a complete schedule of rates, fees, and charges currently applicable to the type of installation, billing policies, information concerning the procedures for making inquiries or complaints, and the address and telephone number of the City office responsible for the administration of the Franchise. The Franchisee shall comply with FCC regulations requiring notice to Subscribers (including, but not limited to, 47 C.F.R. §§ 1602, 1618 and 47 U.S.C. § 551) and shall provide a copy to the City.

B. Prevention of Reception of Undesired Services. Franchisee shall comply with Section 640 of the Cable Act, 47 U.S.C. § 560. In addition, Franchisee shall inform Subscribers at the time of subscription, and annually thereafter, by individual written notice: (i) that they are entitled, upon request and without charge, to receive full blockage of any undesired audio or video programming to which they do not

1 subscribe; (ii) that they are entitled, upon written request and at their charge entitled  
2 to receive blockage of any undesired programming in the Expanded Basic Package,  
3 and ( iii) how to make such a request. Franchisee shall comply with all such  
4 Subscriber requests.  
5

6 9.8 No Interference with Customer Equipment. The Franchisee and any Affiliated Person shall  
7 comply with Applicable Law regarding a Subscriber's ability to utilize consumer equipment of the  
8 Subscriber's choosing.

**SECTION 10. FRANCHISE FEES.**

**10.1 Franchise Fees; Payment Due.**

A. Amount; Date Due. As compensation for the Franchise, the Franchisee shall pay to the City an amount equal to five percent (5%) of annual Gross Revenue throughout the Term of the Agreement. All such Payments shall be made on a quarterly basis and shall be remitted within thirty (30) Days after the last Day of each March, June, September, and December throughout the term of this Agreement and simultaneously with the submission of Franchisee's quarterly report required pursuant to Section 10.2 of this Agreement. The Franchisee may prepay Franchise Fees from time to time with the consent of the City.

B. Change in Amount. The City may, in its sole discretion, increase the amount of the franchise fee up to the maximum amount permitted under state and federal law at any time provided that the City gives the Franchisee sixty (60) Days advance notice of such an increase and provided that the imposition of the increased franchise fee shall be phased in over two years. If the maximum amount is not specifically provided by law, the City and the Franchisee shall negotiate in good faith to amend the Agreement to specify the increased amount. The Franchisee shall begin paying the increased fee from the effective date of the amendment to the Agreement.

C. Payment on Transfer. Except as may otherwise be provided in an agreement between the City and the Franchisee authorizing the transfer of the Cable System, in the event of any transfer of the Cable System to any Person pursuant to this Agreement, the Franchisee, as a condition to the City's approval of any such transfer, shall remit to the City any Franchise Fees due based on the Gross Revenue as of the date of the transfer prior to the effective date of the transfer.

**10.2 Quarterly Report.** Franchisee shall submit to CITY, with a copy to the Director of Finance, a report in such form and containing such detail as CITY and the Franchisee shall agree, not later than the date for payment of the fee required by Section 10.1, setting forth the Gross Revenue for the quarter ending on the last Day of the last month of each quarter. The report shall contain a reconciliation between the Gross Revenue shown in the report and the financial statements for the

Cable System, prepared in accordance with generally accepted accounting principles, over the relevant time period. The report shall also contain a breakdown of Gross Revenues by major revenue categories, including, but not limited to Basic Cable Service, cable programming service, and other services.

10.3 Acceptance by City. No acceptance of any Franchise Fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or as a release of any claim that the City may have for further or additional sums payable under this Agreement. All amounts paid shall be subject to audit and recalculation by the City.

10.4 Ordinary Business Expense. Nothing contained in this Agreement shall prevent the Franchisee or any Affiliated Person from treating the compensation and other payments that it, they, or either of them pays, or may pay, pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting such payments from gross income in any City, state, or federal income tax return.

10.5 Payments to Be Made to the City.

Use of Cable System. If the Franchisee collects any amounts from Subscribers that are to be paid to any Person for the provision of Services on the Cable System or in connection with the Cable System, the Franchisee shall deduct five percent (5%) from such amounts and include the deducted amounts in its payments to the City pursuant to Section 10.1 and in its quarterly report required pursuant to Section 10.2. Unless otherwise agreed by the Franchisee and the City, this Section shall not apply to the provision of Non-Cable Services on the Cable System.

10.6 Franchise Fee and Other Audits.

A. General. At any time during the Term of the Franchise or for three (3) years after the receipt of a payment pursuant to Section 6.5 or this Section 10 (as applicable), whichever is later, the City, at its expense, may commence and conduct an audit or review, pursuant to Section 11.11, of the payments made pursuant to Section 6.5 and this Section 10 by (i) the Franchisee; or (ii) any other Affiliated Person, to the extent that the Affiliated Person's revenues constitute Gross Revenue. Except in extraordinary circumstances, there shall be no more than one (1) audit for each

fiscal year in any twelve (12) month period.

B. Records. At the City's request, the Franchisee shall provide the source records that support the franchise fee and PEG capital funding calculation, as applicable, for the time period(s) being audited and a reconciliation between the Gross Revenue on which the franchise fee is based and the financial statements for the Cable System and a reconciliation between the PEG capital and the number of Subscribers, as applicable, prepared in accordance with generally accepted accounting principles, regardless of whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's operation in the City. The Franchisee shall be responsible for maintaining all such records for at least three (3) years or the period provided under the applicable statute of limitations, whichever is greater.

C. Underpayment. Within 30 Days after notice from the City of any underpayment by the Franchisee, the Franchisee shall:

1. pay the amount of the underpayment to the City, plus interest calculated at the rate and in the manner specified in Section 10.10, and shall pay to the City any corresponding underpayment in support required by Section 6.5, with interest calculated at the rate specified in Section 10.10, or
2. notify the City in writing that it does not agree with the results of the audit and the reasons therefor.

D. Costs of Audit. If the audit or review reveals an underpayment to the City in an amount that exceeds four percent (4%) of the total amount due to the City from the Franchisee over the time period and for the type of payment audited or reviewed, the Franchisee shall reimburse the City for the City's costs of such audit or review.

E. Completion. The City shall have a reasonable period of time to complete the audit or review and to accept the audit or review as accurate and final. At the end of such period, the City shall issue an audit closure notice to the Franchisee. Notwithstanding the issuance of such notice, the City shall have the right to reopen

any audit or review for a period of twelve (12) months after the date of such notice or at any time upon the discovery that the Franchisee or an Affiliated Person has provided fraudulent information or acted in bad faith during the course of the audit or review.

- F. Reservation of Rights. To the extent the parties disagree about the results of the audit, each party reserves the right to exercise all its rights and remedies under this Agreement and Applicable Law.

10.7 Not Franchise Fees. The Franchisee expressly acknowledges and agrees that:

- A. Except for the payments expressly required by Sections 10.1, 10.5, and 10.6 relating to franchise fees, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by the Franchisee pursuant to this Agreement, or otherwise provided or performed in connection with the construction, operation, maintenance, repair, removal, upgrade, rebuild or enhancement of the Cable System, are franchise fees chargeable against the compensation payments to be paid to the City by the Franchisee pursuant to Sections 10.1, 10.5, and 10.6; and

- B. Except for the payments to the City expressly required by Sections 10.1, 10.5, and 10.6 relating to franchise fees, each of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided by the Franchisee, are within the exclusions from the term "franchise fee" set forth in Section 622(g)(2) of the Cable Act, 47 U.S.C. § 542(g)(2) (or any successor thereto); and

- C. The payments due from the Franchisee to the City pursuant to Sections 10.1, 10.5, and 10.6 shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by the Franchisee pursuant to this Agreement; and

- D. The compensation and other payments to be made pursuant to this Section 10 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Franchisee or any



1 Affiliated Person shall be required to pay to the City or to any state or federal agency  
2 or authority. Unless the City agrees otherwise, neither the Franchisee nor any  
3 Affiliated Person shall have or make any claim for any deduction or other credit for  
4 any part of the amount of the compensation or other payments to be made pursuant  
5 to this Agreement from or against any fees or charges which the Franchisee or any  
6 Affiliated Person is required to pay to the City or other governmental agency or  
7 jurisdiction or other governmental taxes of general applicability, including:

- 8 1. any such tax, fee or assessment imposed on both utilities and cable  
9 operators or their services but not including a tax, fee or assessment which  
10 is unduly discriminatory against cable operators or cable subscribers; and
- 11 2. income taxes.

12 Each of the compensation payments, other payments, taxes, and other fees and  
13 charges shall be deemed to be separate and distinct obligations of the Franchisee  
14 and Affiliated Persons.

- 15
- 16 E. Neither the Franchisee nor any Affiliated Person shall apply or seek to apply all or  
17 any part of the amount of any City or other governmental taxes or other fees or  
18 charges of general applicability, including any such tax, fee, or assessment imposed  
19 on both utilities and cable operators or their services but not including a tax, fee, or  
20 assessment which is unduly discriminatory against cable operators or cable  
21 subscribers, as a deduction or other credit from or against any of the compensation  
22 or other payments to be made pursuant to this Agreement, each of which shall be  
23 deemed to be separate and distinct obligations of the Franchisee and Affiliated  
24 Persons.

25

26 Nothing in this Agreement is intended to preclude the Franchisee from exercising any right it may  
27 have to challenge the lawfulness of any tax imposed by the City or any state or federal agency or  
28 authority.

29 10.8 Method of Payment. All payments by the Franchisee to the City pursuant to this Agreement  
30 shall be made payable to the Director of Finance and shall be delivered to CITY.

1  
2 10.9 Interest on Late Payments. In the event that any payment required by this Agreement,  
3 including but not limited to the payment of franchise fees, is not actually received by the City on or  
4 before the applicable date fixed in this Agreement, interest on such payment shall accrue from such  
5 date at a rate equal to the then-prevailing prime rate of interest for commercial loans as published in  
6 the "Money Rates" section of the *Wall Street Journal* or as published by a comparable rate source  
7 to be determined by the City should the rate fail to be published by the *Wall Street Journal*. Such  
8 interest shall be compounded daily, except as otherwise provided in this Agreement.

**SECTION 11. OVERSIGHT AND REGULATION BY CITY.**

**11.1 Oversight.**

A. General. The City shall have regulatory oversight over the Cable System to ensure compliance with the terms and conditions of this Agreement and Applicable Law, including, without limitation, the right to regulate and inspect the construction, operation, maintenance, repair, Upgrade, rebuild, enhancement, and removal of the Cable System, and all parts of the Cable System, provided, however, that the City shall provide not less than three (3) Business Days prior notice to the Franchisee for any inspection that takes place on Franchisee's premises or that requires a representative of Franchisee to obtain access, and provided, further, that such notice shall not be required in the event of an emergency. Regulation may be exercised through any City official, agency, department, duly established public commission, or other Person appointed or authorized by the City to support or assist the City in its regulatory responsibilities.

B. Compliance. The Franchisee shall establish and maintain managerial and operational standards, procedures, records, and controls to enable the Franchisee to be in compliance with each term and condition of this Agreement at all times required by this Agreement.

**11.2 City Reservation of Authority.**

A. Right to Regulate. To the extent allowed by Applicable Law, the City reserves the right to adopt or issue such statutes, rules, regulations, orders, or other directives governing the Franchisee or the Cable System as it shall find necessary or appropriate in the exercise of its police powers or its powers to regulate Cable Service or other service or the Cable System, and the Franchisee expressly agrees to comply with all such lawful statutes, rules, regulations, orders, or other directives; provided that the Franchisee shall not be required to comply with any such statutes, rules, regulations, orders, or other directives that take effect after the Effective Date to the extent such statutes, rules, regulations, orders, or other directives are

1 materially in conflict with the Franchisee's rights and obligations as set forth in this  
2 Agreement.

- 3 B. Exceptions. Notwithstanding Section 11.2A, the Franchisee shall comply with each  
4 statute, rule, regulation, order, and directive of the City (i) that is of general  
5 applicability; (ii) if, in the exercise of its police power, the City finds an emergency  
6 exists constituting a danger to health, safety, property, or general welfare; or (iii) if  
7 the exercise of the City's police power is mandated by law.

8 11.3 Performance Evaluation Sessions.

- 9  
10 A. Special Performance Evaluation Sessions. Special performance evaluation sessions  
11 may be held at any time during the term of the Agreement at the request of the City or  
12 Franchisee.

- 13  
14 B. Open to Public. All special performance evaluations shall be open to the public.  
15 Franchisee shall notify its Subscribers of all evaluation sessions by announcement on  
16 at least two (2) Channels of its Cable System between the hours of 7:00 P.M. and  
17 9:00 P.M. for five (5) consecutive Days preceding each session.

- 18  
19 C. Elements of Evaluation. Topics which may be discussed at any special evaluation  
20 meeting may include, but need not be limited to, Subscriber rate structures, franchise  
21 fees, liquidated damages, free or discounted services, applications of new  
22 technologies, Cable System performance, Services provided, programming offered,  
23 Subscriber and community complaints, privacy, amendments to City ordinances,  
24 rules, and regulations, modifications to this Agreement, judicial and FCC rulings, line  
25 extension policies, and Franchisee or City rules and regulations.

- 26  
27 D. Franchisee Cooperation. The Franchisee shall fully cooperate with the City in all  
28 matters relating to any special evaluation pursuant to this Section and shall, at the  
29 Franchisee's expense, provide such information, data, and documents as the City  
30 may reasonably request in connection with any such evaluation.  
31

11.4 General Provisions Regarding Reports and Records.

- A. Additional Information. Within a reasonable period of time after a request of the the Council, the City Attorney, or CITY, the Franchisee shall submit to the requesting party any information reasonably required to demonstrate compliance with the terms and conditions of this Agreement or Applicable Law.
- B. Deadline for Submission. Unless otherwise specified, any report or other provision of information required under this Agreement shall be due to CITY within thirty (30) Days after the event that triggers the reporting requirement.
- C. Designated Officers and Employees. Throughout the Term of this Agreement, the General Manager of the Franchisee or a person in an equivalent position, or such other person whom the Franchisee designates in writing to CITY, shall be responsible for overseeing the Franchisee's reporting obligations pursuant to this Agreement and for responding to the City's questions regarding the Franchisee's compliance with the terms and conditions of this Agreement. The Franchisee must notify CITY in writing of any change in the designation of such person within five (5) Days after the change.

11.5 Technical Performance Documents.

- A. Within ten (10) Days after receiving the results of any tests or other measurements pertaining to the Cable System's technical performance, including, without limitation: (i) reports on proof-of-performance tests conducted pursuant to 47 C.F.R. § 76.601, or any successor thereto; and (ii) summary flyover reports; the document(s) reflecting such results are to be placed in a file for public inspection pursuant to 47 C.F.R. § 76.1700, or any successor thereto, and the Franchisee shall submit a copy of such document to the City upon request
- B. Documents and records pertaining to daily signal leakage logs created pursuant to 47 C.F.R. §§ 76.614, 76.1706, or any successors thereto, shall be placed in a file for public inspection pursuant to 47 C.F.R. § 76.1700, or any successor thereto, within ten (10) Days after receiving such documents and records.

C. Documents and records pertaining to tests of the emergency alert system pursuant to 47 C.F.R. §§ 11.54, 11.61, 76.1700, or 76.1711, or any successors thereto, shall be provided to the City within ten (10) Days after a request by the City.

11.6 Additional Filings.

Legislative. Within ten (10) Days after the Franchisee has received from or submitted to any City, municipal, state, county, or federal legislative body, agency, or official any communication, public report, petition, or other filing which could have a material adverse effect on the Franchisee, the Cable System, or its operation, the Franchisee shall submit to the City a copy of such report, petition, or other communication. This shall not apply to tax returns, automobile registrations, and other similar routine filings.

11.7 Books and Records.

A. Maintenance. Subject to Section 631 of the Cable Act, 47 U.S.C. § 551, or any successor thereto, the Franchisee shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the Cable System, its operation, any Service distributed over the Cable System and reflected in the calculation of Gross Revenue and each Service-Related Activity. Such books of account and records shall include, without limitation, (i) books of account; (ii) records adequate to enable the Franchisee to demonstrate that it is, and has been, in compliance with each term and condition of this Agreement and Applicable Law; (iii) maps; (iv) plans; (v) income tax returns; (vi) financial statements; (vii) service complaint logs; (viii) Franchisee's inspectors' logs; (ix) performance test results; (x) hardware installation and specification documents; and (xi) records reflecting the true and entire cost of construction, equipment, and maintenance and of the administration and operation of maintenance.

B. Inspection of Books and Records. Subject to Section 631 of the Cable Act, 47 U.S.C. § 551, or any successor thereto, the Franchisee agrees that the City, the City Attorney, the Finance Director or their designated representative(s), upon three (3) Business Days prior notice to the Franchisee, may inspect, examine, copy or audit any of the Franchisee's books and records regarding the operation of the Cable

1 System and the provision of Services in the Franchise Area that are reasonably  
2 necessary to monitor Franchisee's compliance with the provisions of this  
3 Agreement. In the case of audits, the City shall provide five (5) Business Days prior  
4 notice to the Franchisee for an initial meeting between the City and the Franchisee,  
5 at which meeting a reasonable schedule for the audit shall be set. Such inspection,  
6 examination, or audit shall take place at a mutually agreed upon location within  
7 thirty-five (35) miles of CITY's office. Such books and records shall include any  
8 records required to be kept in a public file by the Franchisee pursuant to the rules  
9 and regulations of the FCC and any books and records the City deems relevant that  
10 are held by an Affiliated Person, a cable operator of the Cable System, or any  
11 person holding any form of management contract for the Cable System. With  
12 respect to books and records held by contractors and subcontractors other than  
13 entities described in the preceding sentence, the Franchisee shall cooperate with  
14 the City and exercise its best efforts to obtain access to such books and records.

15 C. Duration of Maintenance. All such documents pertaining to financial matters that  
16 may be the subject of an inspection, examination, or audit by the City shall be  
17 retained by the Franchisee for a minimum period of three (3) years following  
18 termination of this Agreement.

19 D. Proprietary or Confidential Information.

20 1. General. Access by the City to any document, records, or other information  
21 supplied, or required to be supplied, by the Franchisee to the City under this  
22 Agreement shall not be denied by the Franchisee on the grounds that such  
23 documents, records, or other information are alleged by the Franchisee to  
24 contain confidential or proprietary information; provided that this provision  
25 shall not be deemed to constitute a waiver of the Franchisee's right,  
26 pursuant to the Maryland Public Information Act, Md. State Government  
27 Code, Title 10, Subtitle 6 ("MPIA"), as amended, or any successor thereto, to  
28 assert that such documents, records, or other information should be  
29 prevented from disclosure under the MPIA. To invoke any review of such a  
30 claim with respect to such documents, the Franchisee shall physically mark  
31 each page of such document in a manner that conspicuously indicates that

1 the Franchisee believes such page contains confidential or proprietary  
2 information and submit a cover letter claiming such confidential or  
3 proprietary treatment at the same time.

4 2. Public Requests for Franchisee Information. The City agrees to advise  
5 timely the Franchisee of any request by any Person, other than a City official  
6 or employee, seeking to review or obtain such documents. In the event that  
7 the Franchisee determines that the documents are not disclosable under the  
8 MPIA, the City shall timely advise the requesting party, and allow the  
9 Franchisee to challenge the disclosure of such documents at the  
10 Franchisee's own expense. If the Franchisee's challenge of the disclosure is  
11 unsuccessful, the Franchisee, in addition to its own expenses, shall  
12 indemnify, defend, and hold harmless the City, and its officials and  
13 employees, of and from all costs and damages related to the challenge,  
14 including reasonable attorneys' fees.

15 3. Notice. For purposes of this Section, notice shall be provided by facsimile  
16 transmission to the General Manager's attention.

17 4. Actions to Disclose. The Franchisee and the City each agree to provide,  
18 upon written request, the other with copies of all pleadings, court filings, and  
19 non-privileged correspondence relating to the defense of any action brought  
20 to disclose documents under the MPIA.

21 11.8 Inspection of Cable System. The City and its designated representative(s) shall have the  
22 right to access, inspect, and examine any other aspect of the Cable System, including the facilities  
23 and equipment of the Cable System, during normal business hours, provided, however, that the City  
24 shall provide not less than three (3) Business Days prior notice to the Franchisee for any inspection  
25 that takes place on Franchisee's premises or that requires a representative of Franchisee to obtain  
26 access, and provided, further, that such notice shall not be required in the event of an emergency.  
27

28 11.9 Files for Public Inspection. Throughout the term of this Agreement, the Franchisee shall  
29 maintain at its administrative offices in a file available for public inspection during normal business  
30 hours, all documents required by 47 C.F.R. § 76.1700, or any successor thereto, and FCC rules



1 and regulations.

2  
3 11.10 Transfer or Change of Control of Cable System or Franchise Neither the Grantee nor  
4 any other Person may transfer the Cable System or the Franchise without the prior written consent  
5 of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No  
6 change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in  
7 Grantee, shall take place without the prior written consent of the Franchising Authority, which  
8 consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for  
9 (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of  
10 the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a  
11 transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty  
12 (30) days of receiving a written request for consent, the Franchising Authority shall, in accordance  
13 with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it  
14 requires to determine the legal, financial and technical qualifications of the transferee or new  
15 controlling party. If the Franchising Authority has not taken action on the Grantee's written request  
16 for consent within one hundred twenty (120) days, consent shall be deemed given.

17  
18 11.11 No Waiver. The grant or waiver of any one (1) or more of such consents to any transfer  
19 of the Franchisee shall not render unnecessary any subsequent consent, nor shall the grant of any  
20 such consent constitute a waiver or release of any other rights of the City. Any transfer shall, by its  
21 terms, be expressly subordinate to the terms and conditions of this Agreement.

**SECTION 12. INSURANCE AND INDEMNITY.**

**12.1 Liability.**

A. Franchisee. The Franchisee shall, at its own cost and expense, replace, repair, and restore any damaged property to its prior condition and shall pay compensation in the event of any personal injury, death or property damage occasioned by any act or failure to act of the Franchisee, any Affiliated Person, or any officer, employee, agent or subcontractor of either the Franchisee or any Affiliated Person in connection with the construction, operation, maintenance, repair, upgrade, enhancement or removal of the Cable System. Nothing in this Subsection is intended to permit third parties to file claims to enforce this Subsection; rather, the parties intend that only the City may take action to enforce this Subsection.

B. No Liability of the City for Liability of the Franchisee. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable for any Liability of the Franchisee, any Affiliated Person or any other Person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade, rebuild, enhancement or removal of, or other action or event with respect to, the Cable System, any Service-Related Activity or the distribution of any Service over the Cable System. Franchisee undertakes and assumes, for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property, the streets and Public Ways.

C. Moving Wires in Emergencies. The City may, at any time, in case of fire, disaster or other emergency, in its sole discretion, cut or move any of the wires, cables, fibers, amplifiers, appliances or other parts of the Cable System, in which event the City shall not incur any Liability to the Franchisee, any Affiliated Person or any other Person. When possible, the Franchisee shall be consulted prior to any such cutting or movement of its wires, cable, fibers, amplifiers, appliances or other parts of the Cable System. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the Cable System shall be borne by the Franchisee. Should the City cut or move any of the Franchisee's facilities as described in this

1 Section, and such act results in a service interruption or any other result that might  
2 otherwise constitute a violation of this Agreement, such service interruption or result  
3 shall not be deemed a violation of this Agreement by the Franchisee. In the event of  
4 negligence by the City, the City will reimburse Franchisee for all costs that result  
5 from that negligence.

6 D. No Liability for Public Works and Emergencies. Neither the City nor its officials,  
7 boards, commissions, officers, employees, agents, attorneys, consultants or  
8 independent contractors shall have any Liability to the Franchisee or any Affiliated  
9 Person for any Liability as a result of or in connection with the protection, breaking  
10 through, movement, removal, alteration, or relocation of any part of the Cable  
11 System, by or on behalf of the Franchisee or the City, in connection with any  
12 emergency or in connection with any change in the grade or line of any Public Way;  
13 or the elimination, discontinuation and closing of any Public Way, as provided in this  
14 Agreement. The parties understand that the City will be performing such work only  
15 in an emergency or if the Franchisee fails to do so as required by this Agreement.  
16 This section does not absolve the City of Liability if the Franchisee can establish that  
17 the Liability is the result of negligence by the City, its officials, boards, commissions,  
18 officers, employees, agents, attorneys, consultants or independent contractors.

19 E. No Liability for Damages. Consistent with Section 635a of the Cable Act (47 U.S.C.  
20 § 555a), the City, its officers, employees, agents, attorneys, consultants, and  
21 independent contractors shall have no liability to:

- 22 1. the Franchisee;
- 23 2. any Affiliated Person; or
- 24 3. any other Person, to the extent there is privity between such other Person  
25 and either the Franchisee or an Affiliated Person;

26 for any money damages as a result of the exercise of the rights of the City to  
27 approve or disapprove the grant, amendment, renewal, or transfer of the Agreement  
28 or the Franchise.

12.2 Indemnification.

A. General. The Franchisee and each Affiliated Person shall:

1. Defend, indemnify and hold harmless the City, its officers, employees, agents, attorneys, consultants and independent contractors from and against all Liabilities, special, incidental, consequential, punitive and all other damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and witness fees) arising out of or in connection with:

a. the construction, operation, maintenance, repair, upgrade, enhancement, rebuild or removal of, or any other action or event with respect to, the Cable System or any Service-Related Activity; or

b. the distribution of any Service over the Cable System, except as provided in Subsection C of this Section; and

2. Cooperate with the City, by providing, at no charge to the City, such non-financial assistance as may be requested by the City, in connection with any claim arising out of or in connection with the selection of the franchisee for, or the negotiation or award of, this Agreement.

B. Defense and Settlement. In any action in which the Franchisee defends the City, the Franchisee shall consult with the City prior to proposing, accepting or rejecting a settlement and prior to filing any pleading which might estop the City with respect to any question of fact or law. The City shall have the right, at its option, with regard to Liabilities subject to indemnification under this Section, to participate in its own defense by engaging, at its own expense, its own attorneys, experts and consultants. In the event the City and the Franchisee disagree about whether to settle a case for which the Franchisee must indemnify the City under this Section, the issue shall be referred to the City Attorney and the Franchisee's General Manager (or a person in an equivalent or higher position) for resolution. Notwithstanding the foregoing, the Franchisee shall be required to indemnify the City for:

1. final verdicts; and
2. settlements entered into by the City with the Franchisee's prior knowledge and consent.

C. Limitations. As between the City and the Franchisee or any Affiliated Person, the foregoing Liability and indemnity obligations of the Franchisee pursuant to this Section 12 shall not apply to:

1. any willful misconduct or gross negligence of any City officer, employee, agent, attorney, consultant or independent contractor proximately causing any claim or damages;
2. any Liability arising out of the content of Services over the Governmental Channels or the portion of the Institutional Network available to and used by the City to the extent that such claim does not arise out of an act or failure to act by the Franchisee; or
3. any Liability arising out of the content of Services over Public Channels and Educational Channels to the extent that such claim does not arise out of an act or failure to act by the Franchisee.

12.3 Insurance.

A. Coverages and Limits. During the Term of the Agreement and any period of removal of the Cable System following the end of the Term, Franchisee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, in a form acceptable to the City Attorney, the following types and limits of insurance:

1. Workers' compensation insurance meeting Maryland statutory requirements and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each accident.
2. Comprehensive commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000) as the combined single limit for each

1 occurrence of bodily injury, personal injury, and property damage. The  
2 policy shall provide blanket contractual liability insurance for all written  
3 contracts, and shall include coverage for products and completed operations  
4 liability, independent contractor's liability, and property damage from perils of  
5 explosion, collapse or damage to underground utilities, commonly known as  
6 XCU coverage.

- 7 3. Automobile liability insurance covering all owned, hired, and non-owned  
8 vehicles in use by Franchisee, its employees and agents, with personal  
9 protection insurance and property protection insurance to comply with the  
10 provisions of the Maryland no-fault insurance law, including residual liability  
11 insurance with minimum limits of Three Million Dollars (\$3,000,000) as the  
12 combined single limit for each occurrence for bodily injury and property  
13 damage.

14 B. Types of Policies. The coverage amounts set forth in this Section 12.3 may be met  
15 by a combination of underlying and umbrella policies so long as in combination the  
16 limits equal or exceed those stated.

17 C. Period of Coverage. The liability insurance policy or policies required by this  
18 Section 12.3 shall:

- 19 1. Be maintained by the Franchisee throughout the term of this Agreement and  
20 such other period of time during which the Franchisee operates or is  
21 engaged in the removal of the Cable System, whichever period is longer,  
22 and for one hundred twenty (120) Days thereafter; and
- 23 2. Provide coverage for acts and omissions occurring throughout the term of  
24 this Agreement and such other period of time during which the Franchisee  
25 operates or is engaged in the removal of the Cable System, irrespective of  
26 when a claim arising out of such acts and omissions is made.

27 D. Retentions and Deductibles. Franchisee's insurance policy retentions shall not  
28 exceed, as applicable, \$50,000, unless larger retentions are approved in advance by  
29 City in writing. Franchisee agrees to indemnify and save harmless the Indemnitees

1 and Additional Insureds from and against the payment of any retention or deductible  
2 and from the payment of any premium on any insurance policy required to be  
3 furnished by this Agreement.

4 E. Insurance Companies. All insurance shall be effected under valid and enforceable  
5 policies, issued by insurers licensed to do business by the State of Maryland or  
6 surplus line carriers on the Maryland Insurance Commissioner's approved list of  
7 companies qualified to do business in Maryland. All insurance carriers and surplus  
8 line carriers shall be rated A- or better by A.M. Best Company.

9 F. Additional Insureds. All insurance policies, except for workers' compensation  
10 policies, shall name the "City of Annapolis, a municipal corporation of the State of  
11 Maryland and all associated, affiliated, allied and subsidiary entities of the City, now  
12 existing or hereafter created, and their respective officers, boards, commissions,  
13 employees, agents and contractors, as their respective interests may appear" as  
14 additional insureds (referred to as the "Additional Insureds") providing coverage for  
15 the negligence or other conduct of the Additional Insureds to the same extent as  
16 provided to Franchisee. Each policy which is to be endorsed to add Additional  
17 Insureds under this Agreement shall contain cross-liability wording, as follows:

18 "In the event of a claim being made hereunder by one insured for  
19 which another insured is or may be liable, then this policy shall cover  
20 such insured against whom a claim is or may be made in the same  
21 manner as if separate policies had been issued to each insured  
22 hereunder."  
23

24 G. Endorsement. Each such liability insurance policy shall contain the following  
25 endorsement: "It is hereby understood and agreed that this policy may not be  
26 cancelled or not renewed nor the intention not to renew be stated until thirty (30)  
27 Days after receipt by the City, by registered mail, of a written notice of such intent to  
28 cancel or not to renew." Not later than thirty (30) Days prior to said cancellation or  
29 failure to renew, the Franchisee shall obtain one (1) or more replacement insurance  
30 policies in a form acceptable to the City Attorney and shall furnish copies of the  
31 certificate of insurance to the City Attorney and to CITY.

1 H. Notice of Expiration. Prior to the expiration of any insurance policy required of the  
2 Franchisee by this Section, the Franchisee shall provide to CITY and to the City  
3 Attorney evidence acceptable to the City Attorney of the renewal or replacement of  
4 the policy. Further, the Franchisee shall notify CITY and the City Attorney of any  
5 modification or discontinuation of coverage under any such policy, together with a  
6 plan to correct such modification or discontinuation, within two (2) Business Days  
7 after receipt of notice of such modification or discontinuance.

8 J. Contractors. Franchisee shall require that each and every one of its contractors and  
9 their subcontractors carry, in full force and effect, workers' compensation,  
10 employer's liability, comprehensive general liability and automobile liability insurance  
11 coverages of the type which Franchisee is required to obtain under the terms of this  
12 Agreement regarding Additional Insureds, with appropriate limits of insurance. In  
13 the alternative, Franchisee, at its expense, may provide such coverages for any or  
14 all its contractors or subcontractors, but if Franchisee does so it shall provide  
15 evidence of same in writing to City. The relationship of Franchisee's insurance to  
16 any insurance provided by contractors or subcontractors shall be determined by the  
17 respective contracts or subcontracts. However, failure by Franchisee or  
18 Franchisee's contractors or subcontractors to carry the required insurance does not  
19 relieve Franchisee from any liability of the contractors or subcontractors that would  
20 otherwise be covered by insurance.

21 K. Insurance Primary; Not Limiting. The legal Liability of the Franchisee or any  
22 Affiliated Person to the City or any Person for any of the matters which are the  
23 subject of the liability insurance policies required by this Section 12.3, including,  
24 without limitation, the Franchisee's indemnification obligation set forth in  
25 Section 12.2 of this Agreement, shall not be limited by such insurance policies nor  
26 by the recovery of any amounts under such policies, except to the extent necessary  
27 to avoid duplicative recovery from or payment by the Franchisee.



**SECTION 13. ENFORCEMENT, REMEDIES, AND TERMINATION**

**13.1 Rights and Remedies Not Exclusive.**

A. General. The Franchisee agrees that the City shall have the specific rights and remedies set forth in this Agreement, including this Section 13. These rights and remedies are in addition to and cumulative with any and all other rights or remedies, whether existing, express or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement; provided, however, that nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Franchisee. Such rights and remedies shall not be exclusive, but each and every right and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by the City; provided, however, that to the extent the City may obtain a remedy by recourse to the Security Fund pursuant to Section 13.2 of this Agreement.

B. No Waiver or Release. The exercise of one (1) or more rights or remedies shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right or remedy nor shall any such delay or omission in the exercise of any right or remedy be construed to be a waiver of such right or remedy or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Franchisee from its obligations or from any Liability under this Agreement.

**13.2 Security Fund.**

A. Obligation to Maintain. Throughout the Term of this Agreement as the Franchisee operates the System and for at least two hundred ten (210) Days thereafter, the Franchisee shall maintain the Security Fund in the amount specified in Section 13.2B.

B. Amount. On or before the Effective Date, the Franchisee shall provide the City with security for the purposes described in this Agreement in the form of a letter of credit, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), which shall

1 constitute the Franchisee's Security Fund and shall be maintained by the  
2 Franchisee until it is released to the Franchisee pursuant to this Section 13.2. The  
3 letter of credit shall be irrevocable, unconditional, and acceptable to the City  
4 Attorney. The letter of credit shall be issued by a bank, having adequate capital,  
5 assets, earnings, and liquidity to ensure the financial soundness of the issuing  
6 institution, insured by an agency of the United States Government, and acceptable  
7 to the City. The letter of credit shall in no event require the consent of the  
8 Franchisee prior to the collection by the City of any amounts covered by such letter  
9 of credit.

10 C. Purposes. The Security Fund shall serve as security for:

- 11 1. the faithful performance of the Franchisee's obligations pursuant to this  
12 Agreement and any costs, losses, or damages incurred by the City as a  
13 consequence of the Franchisee's performance or nonperformance of the  
14 terms and conditions of this Agreement;
- 15 2. any costs, claims, expenditures, damages, or losses incurred by the City  
16 occasioned by the Franchisee's failure to comply with all rules, regulations,  
17 orders, permits and other directives of the City issued pursuant to this  
18 Agreement or Applicable Law;
- 19 3. all payments due the City from the Franchisee pursuant to this Agreement;
- 20 4. the loss of any payments required to be made by the Franchisee to the City  
21 which would have been received by the City but for the Franchisee's failure  
22 to perform its obligations pursuant to this Agreement during the period of  
23 time between the Franchisee's unexcused or uncured failure to perform and  
24 the date on which the City takes over, or any other Person authorized by the  
25 City takes over, the construction, operation, or maintenance of the System;
- 26 5. any costs incurred by the City in connection with the award of any franchise  
27 for, or other authorization to, construct, operate, maintain, repair, upgrade,  
28 rebuild, or enhance a Cable Communications System in the Franchise Area  
29 necessitated by such a failure to perform; and

6. any costs, losses, expenditures, claims or damages incurred by the City as a result of termination for cause due to a breach pursuant to Section 13.4; and

7. the payment by the Franchisee to the City of any Liability payable to the City and relating to the System that is due and unpaid.

The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable Liability of the Franchisee to the City but only to the extent of said withdrawal.

D. Withdrawals from Security Fund.

1. After Franchisee's receipt of notice from City that the Franchisee has: (a) failed to faithfully perform its obligations under this Agreement; (b) failed to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Agreement or Applicable Law; (c) failed to make any payment required to be made to the City pursuant to this Agreement within the time fixed in this Agreement; (d) breached the Agreement and the Agreement is terminated for cause; (e) failed to pay to the City any Liability payable to the City and relating to the System that is due and unpaid; (f) failed to pay to the City any costs, losses, damages, claims or expenditures which the City has been compelled to pay or has incurred by reason of any act or default of the Franchisee; or (g) failed to comply with any provision of this Agreement which City determines can be remedied by an expenditure of an amount in the Security Fund, which notice shall contain all such details as are necessary to describe such failure, the Franchisee shall take one (1) of the steps specified in Section 13.2D(2).

2. Except as provided in Section 13.3A for liquidated damages, not later than twenty (20) Days after receipt of the notice described in Section 13.2D(1)(a), (b), (d) and (g), the Franchisee shall: (a) cure such alleged failure and provide to City a written explanation and evidence of such cure; or (b) promptly begin to cure such breach, default or other noncompliance and provide to City a written explanation of why such cure cannot be completed

1 within twenty (20) Days, as applicable, as well as a schedule for completing  
2 such cure, both of which are subject to City approval.

3 3. If the Franchisee has failed to take any of  
4 the steps specified in Section 13.2D(2) within the twenty (20) Days, as  
5 applicable, to the satisfaction of City, then City may withdraw the amount  
6 specified in the notice to Franchisee (the notice provided pursuant to Section  
7 13.2D(1)) from the Security Fund.

8 4. For breaches subject to liquidated damages pursuant to Section 13.3 of this  
9 Agreement, City may withdraw liquidated damages from the Security Fund,  
10 and the procedures set forth in Section 13.3A shall apply to such  
11 withdrawals instead of the procedures set forth in this Section 13.2D(1)-(3).

12 E. Replenishment. Within twenty (20) Days after notice from City that any amount has  
13 been withdrawn from the Security Fund, as provided in Section 13.2D of this  
14 Agreement, the Franchisee shall restore the affected components of the Security  
15 Fund to the amount specified in Section 13.2B of this Agreement and provide to City  
16 evidence satisfactory to City that the Franchisee has done so. If a court determines  
17 that said withdrawal by the City was improper, the City shall restore the improperly  
18 withdrawn amount to the affected components of the Security Fund, together with  
19 interest from the date of the withdrawal at the rate specified in Section 10 of this  
20 Agreement, during the period from such withdrawal until such restoration.

21 F. Confirmation of Withdrawals. Within twenty (20) Days after each of the foregoing  
22 withdrawals, City shall notify the Franchisee of the date and amount of the  
23 withdrawal.

24 G. Return of Security Fund. Within two hundred ten (210) Days after the termination of  
25 this Agreement due to the expiration of the Term of the Franchise granted pursuant  
26 to this Agreement, the Franchisee shall be entitled to the return of the Security Fund  
27 deposited pursuant to this Section 13.2, or such portion of the Security Fund as  
28 remains on deposit at said termination, provided that all offsets necessary to  
29 compensate the City for any uncured failure to comply with any provision of this

1 Agreement have been taken by the City. Notwithstanding the foregoing sentence, if  
2 the Franchisee continues to operate the System following the termination of this  
3 Agreement or if the City orders the Franchisee to remove the System as provided in  
4 Section 13.6, the Franchisee shall not be entitled to a return of the Security Fund  
5 until two hundred ten (210) Days after the end of such continued operation or the  
6 completion of removal of the System, whichever is later. In the event of a  
7 termination of this Agreement for cause due to a breach by the Franchisee pursuant  
8 to Section 13.4, such Security Fund shall become the property of the City to the  
9 extent necessary to satisfy the purposes of the Security Fund as set forth in this  
10 Section 13.2, including the covering of any costs, loss or damage incurred by the  
11 City as a result of such termination or breach, provided that any amounts in excess  
12 of such costs, loss or damage shall be refunded to the Franchisee, and provided  
13 further that, to the extent the City actually withdraws from such Security Fund  
14 amounts used to reimburse the City for such costs, losses or damages, such  
15 withdrawn amounts shall not also be considered in determining the "equitable price"  
16 pursuant to Section 13.6.

17 **13.3 Liquidated Damages.**

18 A. Notice and Right to Cure. The Franchisee shall be liable and pay to the City for the  
19 amounts specified in this Section 13.3 and Section 13.2 for any of the following  
20 failures by the Franchisee to comply with the provisions of this Agreement that have  
21 not been cured pursuant to the procedures set forth in Subsection B hereof. The  
22 City shall notify Franchisee of the failure to comply and resulting liquidated damages  
23 and demand that payment of such damages be made within ten (10) Days after  
24 notice is given.

25 B. Amounts. For the following failures to comply with this Agreement, the liquidated

- 26 1. Failure to maintain and provide data, documents, records, reports, or  
27 information to the City pursuant to the terms of this Agreement, or, as  
28 reasonably requested by City, to cooperate with the City during a  
29 performance review of the System or during an audit: Two Hundred Dollars  
30 (\$200) per Day;

2. Failure to adhere to the technical performance standards agreed to in Sections 5.1, 5.2, 5.7 and 5.8 of this Agreement: Five Hundred Dollars (\$ 500) per Day;
3. Failure to comply with the customer service and consumer protection rules set forth in Section 9 of this Agreement and 47 C.F.R. § 76.309 and such other customer service and consumer protection rules, regulations, or standards as may be established by Applicable Law: Five Hundred Dollars (\$ 500) per violation per Day for each Day such violation continues.
4. Failure to obtain a permit where construction, reconstruction, or relocation of the System or its components within the Public Ways of the City is undertaken: One Hundred Dollars (\$100) per Day;
5. Failure of the Franchisee to comply with construction, operation, or maintenance standards: Two Hundred Dollars (\$200) per Day;
6. Failure to test, analyze, and report on the performance of the System: Two Hundred Dollars (\$200) per Day;
7. Failure to provide programming services in accordance with Section 4: One Hundred Dollars (\$100) per Day; and
8. Failure to comply with the material provisions of this Agreement for which an amount is not otherwise specifically provided pursuant to this Section: Five Hundred Dollars (\$500) per Day.

The Franchisee agrees that each of the failures set forth in this Section 13.3 shall result in injuries to the City and its residents, businesses and institutions, the compensation for which will be difficult to ascertain and to prove. Accordingly, the Franchisee and the City agree that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such injuries. The Franchisee agrees that the foregoing amounts are liquidated damages, not penalties or forfeitures, and are within one (1) or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-

1 (D)). Further, the payment of such liquidated damages shall not be deemed to be:  
2 (i) "Payments-in-kind" or involuntary payments chargeable against the compensation  
3 to be paid to the City by the Franchisee pursuant to Section 10 of this Agreement or  
4 chargeable against the payments to the City by the Franchisee pursuant to  
5 Section 6 of this Agreement; or (ii) part of the compensation to be paid to the City by  
6 the Franchisee pursuant to Section 10 of this Agreement or part of the payments to  
7 the City by the Franchisee pursuant to Section 6 of this Agreement. Nothing  
8 contained in this Section 13.3B shall be construed to permit duplicative recovery  
9 from, or payment by, the Franchisee.

10 C. No Pass-Through of Liquidated Damages. The costs associated with payment of  
11 liquidated damages pursuant to Section 13.2, 13.3 and shall not be passed through  
12 to Subscribers in any form, itemized on Subscriber bills, or, for rate regulation  
13 purposes, attributed to capital costs, operating expenses, or external costs of the  
14 System.

15 D. Availability of Additional Remedies; Breach Procedures Not Applicable. To the  
16 extent that the City elects to assess liquidated damages as provided in this  
17 Section 13.3 and such liquidated damages have been paid to the City to the  
18 satisfaction of City, such damages shall be in lieu of the City's right to seek actual  
19 damages for the same failures to comply with this Agreement. Nothing in this  
20 Section 13.3D is intended to preclude the City from exercising any other right or  
21 remedy with respect to: (i) a breach that continues past the time the City stops  
22 assessing liquidated damages for such breach; or (ii) the City's use of a past breach  
23 or past portion of a continuing breach to support a claim of breach or other claim,  
24 one (1) of the elements of which is a previous, continuing or repeated violation of  
25 this Agreement or Applicable Law. Further, the Franchisee's payment of such  
26 liquidated damages shall not preclude the City from considering the breaches for  
27 which such liquidated damages were paid in any decision the City makes on  
28 whether to renew this Franchise pursuant to Section 626 of the Cable Act (47 U.S.C.  
29 § 546) (or any successor thereto), to terminate the Franchise, or otherwise. The  
30 procedures set forth in Sections 13.2 and 13.3A of this Agreement shall apply to  
31 liquidated damages or payments of other amounts payable from the Security Fund

and the withdrawal of any such damages or payments of other amounts from the Security Fund. The breach procedures set forth in Section 13.4B shall apply solely to the remedies for material breach.

#### 13.4 Remedies For Breach.

A. Rights of City. In the event that the City believes that Franchisee fails to comply with a provision of this Agreement or has performed a criminal act (which shall be considered a breach of this Agreement), and has failed to cure any such breach within any applicable cure period after Franchisee's notice of such breach, then the City shall have the right, at its election and without prejudice to any other remedies provided at law or in equity, to pursue any one or more of the following remedies:

1. City may require the Franchisee, within such reasonable time as may be fixed by City, to complete or correct the breach, and to take any or all actions necessary to cure the breach that the City deems appropriate in the circumstances; and/or
2. Seek money damages beyond liquidated damages from the Franchisee as compensation for such breach; and/or
3. Revoke the Franchise granted pursuant to this Agreement by termination of this Agreement pursuant to Section 13.5; and/or
4. City may perform or have performed any or all acts necessary to cure the breach and recover from Franchisee all the costs and expenses incurred in relation to that cure, including attorneys' fees and costs; and/or
5. City may recover from Franchisee all costs, including attorneys' fees, incurred by City as a result of any breach or as a result of actions taken by City in response to any breach.

In addition to all other remedies granted or available to the City, the City may seek, to the extent appropriate under Applicable Law, (a) the restraint by injunction of the violation, or attempted or threatened violation, by the Franchisee of any terms or



1 provisions of this Agreement; or (b) a decree or order compelling performance by  
2 the Franchisee of any term or provision of this Agreement.

3 B. Breach Procedures. The City shall exercise the rights provided in accordance with  
4 the following procedures, which procedures shall not be applicable to other  
5 remedies provided in this Agreement:

6 1. The City shall notify the Franchisee, in writing, of an alleged failure to comply  
7 with a provision of this Agreement, which notice shall specify the alleged  
8 failure with reasonable particularity. The Franchisee shall, within fifteen (15)  
9 Days (for an allegation of breach of financial provisions) or thirty (30) Days  
10 (for an allegation of breach of non-financial provisions) after receipt of such  
11 notice or such longer period of time as the City may specify in such notice,  
12 either: (a) cure such alleged failure and provide to the City a written  
13 explanation and evidence of such cure; or (b) in a written response to the  
14 City, state that such alleged failure will be cured and set forth the method  
15 and time schedule for accomplishing such cure.

16 2. The City shall determine: (a) whether a failure to comply with a provision has  
17 occurred; and (b) whether such failure has been cured or will be cured by  
18 the Franchisee in a manner and in accordance with a schedule acceptable  
19 to the City.

20 3. If City determines that a failure to comply with a provision of this Agreement  
21 has occurred and that such failure has not been or will not be cured by the  
22 Franchisee in a manner and in accordance with a schedule satisfactory to  
23 City, then City may take any action set forth in this Section.

24 13.5 Obligations upon Termination. In the event of any termination, revocation, or expiration of  
25 this Agreement, the City may, at its option:

26 A. Direct the Franchisee to operate the System on behalf of the City pursuant to the  
27 provisions of this Agreement and such additional terms and conditions as are  
28 agreed upon by the City and the Franchisee, for a period of up to one (1) year;

1           B.       If there is an Abandonment, authorize any other Person to operate the System on  
2                    behalf of the City; or

3           C.       Order the Franchisee to cease all construction and operational activities in a prompt,  
4                    workmanlike and safe manner by a date to be specified by the City.

5           In the event of such a termination, revocation, or expiration, the Franchisee shall maintain in  
6           full force and effect the security fund required by Section 13.9 for a reasonable period  
7           following the date of termination, revocation, or expiration, but in no event less than three  
8           (3) years where Comcast is removing the System and one (1) year in all other instances  
9           following termination, revocation or expiration. Pursuant to this Section, the Franchisee  
10          shall cooperate with the City in maintaining continuous and uninterrupted distribution of  
11          Services over the System, including, but not limited to, operating the System for a period of  
12          time specified by the City for a period up to one (1) year; it is the intent of the parties that  
13          only the City may take action to enforce this sentence.

13.6 City's Right to Order Removal or to Acquire or Effect a Transfer of the System.

A. Removal. In addition to its rights under this Section , upon any termination, revocation, or expiration, the City may, in its sole discretion, but shall not be obligated to, in the event the System is not sold, direct the Franchisee to immediately discontinue the provision of Services and all rights of Franchisee to use the Public Ways shall cease. City may direct Franchisee to remove, at the Franchisee's sole cost and expense, all or any portion of the System from all Public Ways and other public property within the City, including all supporting structures, poles, transmission, and distribution portions of the System and other appurtenances, fixtures, or property from the Public Ways in, over, under, along, or through which they are installed within six (6) months after the termination, revocation, or expiration, except that: (i) Franchisee may abandon its facilities in place; and (ii) Franchisee cannot remove underground facilities without City's consent in advance, which consent shall not be unreasonably withheld. Removal shall be subject to the following:

1. This provision shall not apply to buried cable which the City determines should not be removed;
2. Prior to any removal, Franchisee shall notify City where removal will occur;
3. In removing the System, or any part of the System, the Franchisee shall comply with all requirements of Section 3 for construction within the Public Ways and shall restore and leave all Public Ways and other property in as good condition as that prevailing prior to the Franchisee's removal of the System, including any improvements made to such property subsequent to the construction of its System, and without affecting, altering, or disturbing in any way any electric, telephone or other utility cables, wires, or attachments (except to the extent such affecting, altering, or disturbing is permitted by an agreement between the Franchisee and the applicable owner of the cable, wires, or attachments);

- 1           4.       Restoration of streets and City property, including, but not limited to, Public  
2               Ways, shall be in accordance with the requirements of Section 3 and the  
3               directions and specifications of City and all Applicable Law, at Franchisee's  
4               sole expense. The City shall have the right to inspect and approve the  
5               condition of such Public Ways and public property after removal;
- 6           5.       Notwithstanding any other provisions of this Agreement, the Security Fund,  
7               and liability insurance and indemnity provisions of this Agreement shall  
8               remain in full force and effect during the entire period of removal and  
9               associated repair of all Public Ways and other public property (or during  
10              such longer period as may be required by any other provision of this  
11              Agreement);
- 12          6.       Removal and restoration shall be commenced within thirty (30) Days after  
13              the removal order by the City and shall be completed within six (6) months  
14              thereafter, including all associated repair of all Public Ways and other public  
15              property; and
- 16          7.       If, in the reasonable judgment of City, the Franchisee fails to substantially  
17              complete such removal and restoration, including all associated repair of  
18              Public Ways and other public property, within six (6) months after the  
19              revocation, termination, or expiration; then, to the extent not inconsistent  
20              with Applicable Law, the City shall have the right to: (a) declare that all  
21              rights, title and interest to those portions of the System within Annapolis City  
22              (or outside Annapolis City but used exclusively for the System) belong to the  
23              City with all rights of ownership, including, but not limited to, the right to  
24              operate the System or to effect a transfer of the System to another Person  
25              for operation; or (b)(i) authorize removal of the System, including all  
26              associated repair of Public Ways and other public property, by another  
27              Person at the Franchisee's cost, and (ii) declare that, to the extent not  
28              inconsistent with Applicable Law, any portion of the System within The City  
29              of Annapolis(or outside the City of Annapolis but used exclusively to serve  
30              Persons within the City of Annapolis) not designated by the City for removal  
31              shall belong to and become the property of the City without compensation to

1 the Franchisee and the Franchisee shall execute and deliver such  
2 documents, as City shall request, in form and substance acceptable to City,  
3 to evidence such ownership by the City; and

- 4 8. In the event Franchisee chooses to remove its System and fails to  
5 satisfactorily restore all areas to the condition in which they existed prior to  
6 the original construction of the System, City, at its option, may perform such  
7 work, and, if such work is performed within two (2) years after the  
8 revocation, termination, or expiration of this Agreement, collect the costs  
9 thereof from Franchisee.

10 Notwithstanding the foregoing, the Franchisee may dispose of any portion of the  
11 System (other than the Institutional Network) not designated by the City for removal  
12 during such six (6) month period; provided, however, that if the Franchisee fails to  
13 complete the removal of the portion(s) of the System designated for removal by the  
14 City within such period, then all such portion(s) of the System not disposed of and all  
15 amounts collected for any portion(s) of the System disposed of by the Franchisee  
16 during such period shall belong to the City, with no price due to the Franchisee.

17 For purposes of this Section, the System shall not be deemed to include any  
18 trademarks, service marks or any other intangible personal property of the  
19 Franchisee that is not necessary for the operation of a Cable System in Annapolis  
20 City. Without limiting the types of intangible personal property that are necessary for  
21 such operation, nothing in this paragraph shall be construed to exclude the  
22 Franchisee's list of Subscribers, their addresses, the Services that they receive and  
23 similar information from the meaning of the System as used in this Section .

- 24 B. Acquisition or Transfer. Upon any termination, revocation or expiration and as an  
25 alternative to ordering removal of the System, the City shall have the right to, and  
26 may, in its sole discretion and in accordance with Section 627 of the Cable Act (47  
27 U.S.C. § 547) (or any successor thereto) and other Applicable Law, acquire, or  
28 effect a transfer to a third party acceptable to the City, of all or any part of the  
29 System and all components thereof necessary to maintain and operate the System  
30 pursuant to the terms of this Agreement, provided that this requirement shall apply

1 only to those portions of the System within Annapolis City (or outside Annapolis City  
2 but used exclusively to serve Persons within Annapolis City). The City shall notify  
3 the Franchisee ninety (90) Days after the termination, revocation or expiration of its  
4 intent to purchase or transfer the System. For a period of sixty (60) Days after such  
5 notice is given, the City and the Franchisee shall negotiate, in good faith, the terms  
6 and condition of the purchase of the System, including the purchase price, as  
7 detailed below.

8 C. Price. The price to be paid to the Franchisee upon an acquisition or transfer by the  
9 City or a third party acceptable to the City shall depend upon the nature of the  
10 termination. If the Franchise expires without any request by the Franchisee  
11 pursuant to Section 626(a)(1) of the Cable Act (47 U.S.C. § 546(a)(1)) (or any  
12 successor thereto) that it be renewed, or if the renewal of the Franchise is denied,  
13 then the price shall be fair market value, determined on the basis of the System  
14 valued as a going concern but with no value allocated to the Franchise itself (*i.e.*,  
15 the fair market value of the System valued as a going concern, with a deduction for  
16 the value allocable to the Franchise itself). If the termination is due to the revocation  
17 of the Franchise for cause, including, but not limited to, revocation due to a breach  
18 of this Agreement by the Franchisee, then the price shall be an equitable price.

19 D. Valuation Date and Appraisal. The date of valuation for purposes of the price  
20 determination shall be the Day before the date the City preliminarily elects to acquire  
21 or to effect a transfer of the System. If the City and the Franchisee cannot agree  
22 upon the purchase price, the City shall have the right to require the convening of a  
23 panel of qualified cable system appraisers to determine the fair market value of the  
24 Cable System. Such panel, if required, shall be composed of one appraiser chosen  
25 by the City, one appraiser chosen by the Franchisee, and a third appraiser chosen  
26 by the first two appraisers. The Franchisee shall make necessary data and  
27 information available to the appraisers. All expenses of the appraisal, including the  
28 fees of the appraisers, shall be borne by the parties in equal shares. Within sixty  
29 (60) Days after the three appraisers have been selected, each shall independently  
30 appraise the value of such assets and shall, without disclosing such value to the  
31 other appraisers, record and seal the appraised value in an envelope. Upon

1 completion of all appraisals, the appraisers shall convene together and open and  
2 disclose to each other their sealed appraised values for such assets. The appraised  
3 value which is farthest from the average of the three disclosed figures shall be  
4 discarded and the average of the two remaining values shall be certified to the City  
5 and the Franchisee by all three appraisers as having been determined in  
6 accordance with this Subsection of this Agreement. The figure so certified shall be  
7 deemed by the Franchisee and the City to be the fair market value of such assets.

8 13.7 Franchisee's Obligations. In the event of any acquisition or transfer pursuant to Section 13  
9 the Franchisee shall:

10 A. cooperate with the City or any third party in maintaining continuous and  
11 uninterrupted distribution of Services over the System, including, but not limited to,  
12 operating the System for a period of time specified by the City but not to exceed one  
13 (1) year;

14 B. promptly execute all appropriate documents to transfer to the City or third party, free  
15 of any and all encumbrances, title to the System, all components thereof necessary  
16 to operate and maintain the System pursuant to the terms and conditions of this  
17 Agreement, as well as all contracts, leases, licenses, permits, rights-of-way and any  
18 other rights, contracts or understandings necessary to maintain the System and the  
19 distribution of Services over the System; provided that such transfers shall be made  
20 subject to the rights under the Maryland Uniform Commercial Code, Md. State  
21 Government Code, Titles 1-10, as amended, or any successor thereto, and, to the  
22 extent that any collateral consists of real property, under Annapolis City's real  
23 property law, of banking or lending institutions which are secured creditors or  
24 mortgagees of the Franchisee at the time of such transfers; and provided that the  
25 City shall have no obligation following said transfers to pay, pledge or otherwise  
26 commit in any way any general or any other revenues or funds of the City, other  
27 than the net operating revenues received by the City from its operation of the  
28 System, in order to repay any amounts outstanding on any debts secured by the  
29 System which remain owing to such creditors or mortgagees; and provided, finally,  
30 that the total of such payments by the City to such creditors and mortgagees, from  
31 the net operating revenues received by the City from its operation of the System,

1 shall in no event exceed the lesser of: (a) the fair market value of the System on the  
2 date of the transfer of title to the City or (b) the outstanding debt owed to such  
3 creditors and mortgagees on said date. Nothing in this Section shall be construed  
4 to limit the rights of any such banking or lending institutions which are not Affiliated  
5 Persons to exercise its or their rights as secured creditors or mortgagees at any time  
6 prior to the payment of all amounts due pursuant to the applicable debt instruments;  
7 and

8 C. promptly supply City with all necessary records to reflect the City's or third party's  
9 ownership of the System and to operate and maintain the System, including, without  
10 limitation, all Subscriber records and plant and equipment layout documents.

11 It is the intent of the parties that only the City may take action to enforce Subsection A of  
12 this Section.

13 13.8 Other Provisions. The City and the Franchisee shall negotiate in good faith all other terms  
14 and conditions of any such acquisition or transfer, except that, in the event of any  
15 acquisition of the System by the City:

16 A. The City shall not be required to assume any of the debts or obligations of any  
17 collective bargaining agreements or any other employment contracts held by the  
18 Franchisee or any other obligations of the Franchisee or its officers, employees or  
19 agents, including, without limitation, any pension or other retirement or any  
20 insurance obligations;

21 B. The City shall not be required to assume any Liabilities; and

22 C. The City may lease, sell, operate or otherwise dispose of all or any part of the  
23 System in any manner.

24 In the event the City does assume any of the debts or obligations of the Franchisee, the  
25 payment terms shall be adjusted accordingly.



13.9 Termination.

A. General. The termination of this Agreement shall occur upon the earliest to occur of: (i) the revocation of the Franchise granted pursuant to this Agreement as provided in Section 13.4; (ii) an Abandonment of the System; or (iii) subject to Section 626 of the Cable Act (47 U.S.C. § 546) (or any successor thereto), the expiration of the Term of the Franchise as set forth in Section 2, or otherwise.

B. Termination Not a Waiver. The termination of this Agreement (in any way specified in Section 13) shall not, for any reason, operate as a waiver or release of any obligation or Liability of the Franchisee or any other Person, as applicable, incurred or accrued prior to the date of such termination. If the Franchisee continues to operate all or any part of the System after the expiration of the Term of the Franchise, without renewal, then (i) this Section shall not be construed to waive or release any obligation or Liability of the Franchisee arising out of such continued operations; and (ii) the Franchisee shall comply with the terms and conditions of this Agreement, including, but not limited, to all compensation and other payment provisions of this Agreement. Any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement.

C. Effect of Termination. In the event of a termination as set forth in this Section ; the Term of the Franchise shall expire and the Franchise shall be revoked; all rights of the Franchisee in the Franchise shall cease, with no value allocable to the Franchise itself; and the rights of the City and the Franchisee to the System, or any part thereof, shall be determined as provided in Sections 13.5 through 13.8.

**SECTION 14. MISCELLANEOUS PROVISIONS.**

**14.1 Delays and Failures Beyond Control of Franchisee.**

A. General. Notwithstanding any other provision of this Agreement, the Franchisee shall not be liable for reasonable delay in the performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike; war or act of war; riot; fire; flood or other act of God; unusually severe weather conditions considering the time of year; manufacturing delays or delays in delivery due to conditions that would otherwise relieve the Franchisee from liability under this Section; loss of utility service or facilities, except to the extent such loss should have been covered by the Franchisee's standby and backup power supplies; any act, order, or decree of any governmental agency or judicial body; or any other event to the extent that the event is reasonably beyond the Franchisee's ability to anticipate or control.

B. Partial Impact. In the event that any such delay in performance or failure to perform affects only part of the Franchisee's capacity to perform, the Franchisee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such delays as rapidly as possible.

C. Notice. The Franchisee shall notify CITY by fax or telephone of the occurrence of any event covered by this Section within five (5) Business Days of the time at which the Franchisee learns of the occurrence.

**14.2 Notice.**

A. Any notice or communication required or permitted to be given under this Agreement shall be in writing, signed by an authorized representative, and delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) Business Day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) Business Days after deposit in the U.S. mail, as

1 evidenced by a return receipt. By notice complying with the requirements of this  
2 Section 14.2, each party to this Agreement shall have the right to change the  
3 address or the addressee, or both, for all future notices and communications to  
4 them, but no notice of a change of addressee or address shall be effective until  
5 actually received.

6 B. Notices and communications to the City shall be addressed to, and delivered at, the  
7 following address:

8 City Attorney  
9 City of Annapolis  
10 93 Main Street, 2<sup>nd</sup> Floor  
11 Annapolis, Maryland 21401

12  
13 City Administrator  
14 City of Annapolis  
15 160 Duke of Gloucester  
16 Annapolis, Maryland 21401

17  
18 City Finance Director  
19 City of Annapolis  
20 160 Duke of Gloucester  
21 Annapolis, Maryland 21401

22  
23  
24 Notices and communications to the Franchisee shall be addressed to, and delivered  
25 at, the following address:

26  
27 Comcast of Maryland, Inc.  
28 253 Najoles Road  
29 Millersville, Maryland 21108  
30 Attention: General Manager  
31

With a copy to: Comcast Cable Communications, Inc.  
1500 Market Street, 32nd Fl.  
Philadelphia, PA 19102  
Attn: Legal Department

C. Notice from the City. Notwithstanding any other provision of this Section, any notice the City is required to give to the Franchisee pursuant to Section 13 of this Agreement for which a cure period is ten (10) Days or less must be served by personal delivery, overnight mail service, or facsimile transmission.

14.3 Public Notice. The minimum public notice of any public meeting relating to the Franchise shall be by publication at least once in one (1) newspapers of general circulation in the area not less than seven (7) nor more than fourteen (14) Days prior to the meeting, posting in all customer service centers in the City, and by announcement on at least one (1) Channels on the Cable System between the hours of 7:00 p.m. and 9:00 p.m., for three (3) consecutive Days prior to the meeting.

14.4 Entire Agreement. This Agreement, including all Appendices attached, contains the entire understanding and agreement between the City and the Franchisee with respect to the subject matter of this Agreement. All prior negotiations, drafts of this Agreement or any part thereof, understandings, and agreements, including, without limitation, all written or oral statements or representations of any official, employee, agent, attorney, consultant, or independent contractor of the City or Franchisee, are merged in and superseded by this Agreement. The Franchisee shall comply with the terms and conditions of the Previous Franchise Agreement, as amended, for any period between the date of execution by the Franchisee and the Effective Date.

14.5 Modification. Except where this Agreement specifies that a provision may be modified without the approval of both parties, no provision of this Agreement may be modified unless and until such change is reduced to writing, duly authorized and executed by the authorized representatives of each of the parties, and delivered.

14.6 Severability. If any section, subsection, sentence, clause, provision, or other portion of this

1 Agreement is declared to be invalid or unenforceable, in whole or in part, for any reason, by any  
2 court, agency, commission, legislative body, or other authority of competent jurisdiction, such  
3 declaration of invalidity or unenforceability of such section, subsection, sentence, clause, provision,  
4 or other portion shall not affect the validity of any of the remaining portions of this Agreement, which  
5 other portions shall continue in full force and effect. If any material provision of this Agreement is  
6 found to be unenforceable in a final judicial or administrative proceeding, the parties shall enter into  
7 good faith negotiations with the intent of reaching an agreement that would place all parties to this  
8 Agreement, and Cable System users and Subscribers, substantially in the same position as if this  
9 Agreement were fully enforceable.

10  
11 14.7 Preemption. In the event that federal or state laws, rules, or regulations preempt a provision  
12 or limit the enforceability of a provision of this Agreement, then the provision shall be read to be  
13 preempted to the extent and for the time, but only to the extent and for the time, required by law. In  
14 the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended,  
15 or otherwise changed so that the preempted provision is no longer preempted, such provision shall  
16 immediately return to full force and effect, and shall thereafter be binding on the parties, without the  
17 requirement of further action on the part of the City.

18 14.8 Governing Law. This Agreement shall be deemed to be executed in the State of Maryland,  
19 and shall be governed in all respects, including validity, interpretation and effect, and construed in  
20 accordance with the laws of the State of Maryland, without regard to its conflicts of laws principles, as  
21 applicable to contracts entered into and to be performed entirely within that jurisdiction.

22 14.9 Priority of Maryland Laws. To the extent the rules and regulations promulgated by the City,  
23 and the administrative and judicial decisions interpreting such rules and regulations, answer a  
24 question left to Applicable Law under this Agreement, such rules, regulations, and decisions shall  
25 take precedence over any other source of Maryland law.

26 14.10 Action Taken by City. Any action to be taken by the City pursuant to this Agreement shall be  
27 taken in accordance with Applicable Law, as such Law may be amended or modified throughout the  
28 Term of this Agreement.

29 14.11 No Waiver; Cumulative Remedies. Subject to the conditions and limitations established in  
30 this Agreement, no failure on the part of the City or the Franchisee to exercise, and no delay in

exercising, any right under this Agreement shall operate as a waiver of such right, nor, except as otherwise provided in this Agreement, shall any single or partial exercise of any such right preclude any other right. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law or in equity, and nothing contained in this Agreement shall impair any of the rights of the City under Applicable Law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by either party at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by such party at any other time. No waiver shall be effective unless explicit and in writing. The failure of the City to take any action in the event of a material breach by the Franchisee shall not be deemed or construed to constitute a waiver of or otherwise affect any right of the City to take any action permitted by this Agreement at any other time in the event that such material breach has not been cured, or with respect to any other material breach by the Franchisee; provided that this sentence is not intended to change or affect the application of the last sentence of Section 626(d) of the Cable Act, 47 U.S.C. § 546(d), or any successor to such sentence.

14.12 Cooperation. The parties recognize that it is in their mutual best interest to cooperate with each other in accordance with the terms and provisions of this Agreement. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party shall notify the agent designated for this purpose by the other. That agent will use his or her best efforts to facilitate the particular action requested.

14.13 No Opposition. By execution of this Agreement, the Franchisee:

A. accepts the validity of the terms and conditions of this Agreement, including the Appendices, in their entirety; and

B. waives and relinquishes, to the maximum extent permitted by Applicable Law, any and all rights it has as of the Effective Date, or may have had prior to the Effective Date, in law or in equity, to assert in any manner, at any time or in any forum, that this Agreement, the Franchise, or the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted, are not consistent with Applicable Law as of the Effective Date.

1 14.14 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties  
2 to this Agreement and their respective successors and permitted transferees and assigns. All of the  
3 provisions of this Agreement apply to the Franchisee, its successors, and assigns.

4 14.15 No Recourse Against the City. The City and its officials, boards, commissions, officers,  
5 employees, agents, attorneys, consultants or independent contractors shall have no liability for any  
6 loss, expense, or damage arising out of any provision or requirement of the Franchise, the  
7 enforcement of the Franchise, or the regulation of Cable Service, except as provided by Section  
8 635a of the Cable Act (47 U.S.C. §555a) and as otherwise provided by Applicable Law.

9  
10 14.16 Interpretation. This Agreement shall be construed without regard to the identity of the party  
11 who drafted the various provisions of this Agreement. Moreover, each and every provision of this  
12 Agreement shall be construed as though all parties to the Agreement participated equally in the  
13 drafting of this Agreement. As a result of the foregoing, any rule of construction that a document is  
14 to be construed against the drafting party shall not be applicable to this Agreement.

15 14.17 Headings and Interpretation. The headings contained in this Agreement are to facilitate  
16 reference only, do not form a part of this Agreement, and shall not in any way affect the  
17 construction or interpretation of this Agreement.

18 14.18 Terms. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder,” and “hereto”  
19 refer to this Agreement as a whole and not to the particular sentence or paragraph where they  
20 appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall” and  
21 “will” are mandatory, not merely directive. All references to any gender shall be deemed to include  
22 all others, as the context may require. Terms used in the plural include the singular, and vice versa,  
23 unless the context otherwise requires. “Number” shall include “amount” and vice versa.

24 14.19 Days and Time; Computation of Time.

25 A. Days and Time. Any reference in this Agreement to “day” or “days” shall mean  
26 calendar days and not Business Days. If the date for giving or receiving of any  
27 notice or the performance of any obligation required by this Agreement falls on a  
28 Saturday, Sunday, or federal or State of Maryland holiday, then the notice or  
29 obligation may be given or performed on the next Business Day after such Saturday,

Sunday, or federal or State of Maryland holiday. Any reference to time of day in this Agreement shall refer to local time for the City.

- B. Computation. Unless otherwise provided, the first Day to be counted under this Agreement when a period of time begins with the occurrence of an act, event, or default is the Day after the Day on which the act, event, or default occurs. When computing a period of time, the last Day of such period is included in the computation, and any required action must be taken on or before that Day. It is immaterial whether the first Day of a time period is a Holiday.

14.20 No Agency. The Franchisee shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City. No liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities, or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or to either party's agents or employees as a result of the performance of this Agreement.

14.21 Delegation of City Rights.

- A. Reservation and Notice. Except where this Agreement specifies that an action is to be taken by the Council, the City reserves the right to delegate and re-delegate, from time to time, any of its rights or obligations under this Agreement to any body, organization, or official. Any such delegation by the City shall be effective upon written notice by the City to the Franchisee of such delegation. Upon receipt of such notice by the Franchisee, the Franchisee shall be bound by all terms and conditions of the delegation not in conflict with this Agreement.

- B. Not an Amendment. Any such delegation, revocation, or re-delegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of the Franchisee.

- C. Fact-Finding. Nothing in this Section shall be construed to prevent the Council from delegating any fact-finding function, including, but not limited to, the hearing of evidence, in support of a decision that must be made by the Council under this Agreement, provided that the Council is the entity that shall adopt the final findings



1 of fact and conclusions of law for the City, subject to any subsequent judicial  
2 process under Applicable Law.

3 14.22 No Third Party Beneficiaries. Nothing in this Agreement shall create, or be construed to  
4 create, any third party beneficiary rights in any person or entity not a signatory to this Agreement.

5 14.23 Time of the Essence. Time is of the essence in the execution and performance of all terms  
6 and provisions of this Agreement.

7 *[signatures on following page]*

1           IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day  
2 and year first above written.  
3  
4

5       MAYOR AND CITY COUNCIL OF ANNAPOLIS  
6

7       By: \_\_\_\_\_  
8           Ellen O. Moyer, Mayor  
9

10      ATTEST:  
11

12      \_\_\_\_\_  
13      Custodian of Seal  
14  
15

16      COMCAST OF MARYLAND, INC.  
17

18      By: \_\_\_\_\_  
19      Bruce D. Abbott, Vice President and General Manager  
20  
21

22      WITNESS/ATTEST:  
23

24      \_\_\_\_\_  
25

26      Approved as to Form and Legal Sufficiency:  
27  
28

29      \_\_\_\_\_  
30      Shaem C. Spencer, City Attorney  
31  
32  
33  
34  
35      \_\_\_\_\_  
36

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## INSTITUTIONAL NETWORK AGREEMENT

THIS INSTITUTIONAL NETWORK AGREEMENT ("I Net Agreement") is entered into this \_\_\_\_ day of April, 2005, by and between THE MAYOR AND THE CITY COUNCIL OF ANNAPOLIS, a municipal corporation of the State of Maryland ("City"), and COMCAST OF MARYLAND, INC., a Colorado corporation with its principal place of business at 253 Najoles Road, Millersville, Maryland ("Franchisee"):

### WITNESSETH:

WHEREAS, the Franchisee holds a franchise to operate a cable television system within the City pursuant to the Franchise Agreement dated as of April \_\_, 2005 (the "Franchise Agreement"); and

WHEREAS, the City and Franchisee agree that the construction of an Institutional Network ("I Net") concentrating on City facilities is in the public interest.

NOW, THEREFORE, the City and Franchisee agree as follows:

### **1. Obligation to Construct**

In addition to the Subscriber Network capacity of the System required under this Franchise, the Franchisee shall, upon the request of the City, provide System plant, capacity, or services, or a combination thereof, to be used for an I-Net, which, at the City's discretion, may be used by the City and its agencies, other governments and their agencies, and public corporations created by the City. Franchisee will construct up to six I Net sites for the exclusive use of the City for the duration of the term of the Franchise Agreement entered into on April 2005. The total costs for any I Net sites that are constructed by the Franchisee shall not exceed \$150,000. The \$150,000 cost to construct the I Net sites will appear as an I Net fee. The addresses of the six INET sites to be provided are:

1. 160 Duke of Gloucester (City Hall)
2. 159 Duke of Gloucester .
3. 93 Main Street (Central Services, HR, Law and City Clerk)
4. 9 St Mary's St (Recreation & Parks HQ)
5. 1 Dock St (Harbor Master)

6. 44 Calvert St (AACO Arundel Center)

**2. I-Net Design, Functionality and Management**

If requested, the Franchisee shall provide an I-Net according to a design and functionality to be specified by the City. As the City may require, the I-Net shall be capable of full bi-directional, video, voice and low- and high-speed data communications (including, but not limited to, closed circuit video applications). The City may require the Franchisee: (1) to install separate I-Net fiber or coaxial cable; (2) to permit the City and users authorized by the City to use available capacity on the existing Cable System for the activation of I-Net sites where capacity requirements do not necessitate separate I-Net construction; or (3) to provide an I-Net consisting of a combination of (1) and (2). Such Subscriber Network capacity as provided for in section 2. (2) above may be recovered by the Franchisee for its own use with 12 months prior notice to the City when the capacity is needed by the Franchisee for commercial purposes. The I-Net provided for herein shall be constructed by the Franchisee and placed under the control of the City or its designee for management and operation. The Franchisee, as requested by the City, shall maintain the I-Net it provides up to the demarcation point. The demarcation point for purposes of this section shall be the patch panel, termination block, or other termination device located at each I-Net site, at the point closest to the Franchisee's facilities where the device transmits signals to and from the I-Net provided by Franchisee. The Franchisee shall provide maintenance for all portions of the I-Net that are overlashed to Franchisee's Cable System. However, for all other portions of the I-Net the City or a designee of the City may provide maintenance. If the City requests the Franchisee to maintain the I-Net Franchisee provides, Franchisee will perform all such work, at the direction of the City; promptly and in a manner consistent with ensuring that the network is highly reliable for all I-Net uses; and it will do so in a manner consistent with good engineering practice, using qualified personnel. The City will be responsible for the pro rata costs associated with maintenance of the I-Net that Franchisee is required to perform. To the extent the City or its designee perform maintenance, the City is hereby granted a right of reasonable and timely access to Franchisee's facilities to perform this maintenance. For purposes of this section 2., the "Cable System" refers to all portions of the Franchisee's Cable System other than the I-Net dedicated for the City's exclusive use. The term "overlashed" refers to any situation where the I-Net shares strand with the Franchisee's Cable System, whether the I-Net is overlashed or included within the same sheath as other portions of Franchisee's System. The electronics, taps and splice points located on any overlashed part of the System are considered part of the overlashed System.

**3. Process for Integrating I-Net with System and Future Construction**

The I-Net capacity to any location shall be provided within eighteen (18) months following a request by the City that the Franchisee construct or provide an I-Net connection to that location. The Franchisee shall cooperate with the City to ensure the most cost-effective construction of the I-Net. At the time of any request for construction of an I Net site, the City may request an estimate for the cost of construction at that site.

**4. Interconnection of Institutional Network to other Networks**

The Franchisee shall, at the direction of the City, connect the I-Net to the City's I-Net control sites or any Master Control Site as may be designated by the City. The City shall be permitted to interconnect the I-Net, directly or indirectly, with any other network for PEG or I-Net purposes. The Franchisee shall permit the City reasonable access to its facilities as may be necessary to install, replace, repair or maintain such equipment as may be necessary to operate or monitor the I-Net. The square footage of floor space that is available within Franchisee's Annapolis headend facilities shall be sufficient to accommodate two floor-to-ceiling equipment rack units, incidental wiring, and additional floor space at fair market rental value, so long as the space is available.

**5. Limits on Use**

**A.** Unless a limit upon use is specified in this Section, the I-Net provided by Franchisee may be used for any communications, in any form, for any (a) municipal purpose (proprietary or governmental); (b) educational purpose; (c) public purpose, or for use of the PEG Channels on the Subscriber Network. Without limitation, it is understood that the connections to county or other government institutions and transmissions to and among these institutions fall within the terms above. Fees may be charged by the City for use of the I-Net or for the information transmitted via the I-Net. The I-Net may be linked to any other communications network used by the City, including the Internet. However, the City (or an entity under the City's control) may not use the I-Net provided by Franchisee to act as the Internet Service Provider for the general public or any commercial establishments.

**B.** Appropriate uses of the I-Net include, by way of example and not limitation: (1) Transmitting data to and from City departments and to and from the public; (2) Providing terminals at public locations that allow members of the

1 public to access remote databases; **(3)** Transmitting live and  
2 stored instructional materials (whether in the form of data,  
3 video, or otherwise) to and from City departments and to the  
4 public; **(4)** Providing kiosks where members of the public may  
5 access information; **(5)** Providing video conferencing among  
6 municipal locations and to other locations for municipal and  
7 educational purposes such as economic development and  
8 distance learning; **(6)** Providing for remote permitting,  
9 remote arraignment, and voice traffic to and from the City  
10 departments.  
11

1       C. The City may designate an entity to manage the I-Net  
2       provided by Franchisee and any fees charged to the City or  
3       to Users shall not exceed the actual cost incurred by the  
4       Person to manage the I-Net provided by Franchisee. Cost does  
5       not include a reasonable profit. The City may not lease, to  
6       a third party, any portion of the network that Franchisee  
7       installs or leases to the City without the prior written  
8       permission of the Franchisee. Where the primary purpose of  
9       any use is commercial and for profit, the I-Net provided by  
10      Franchisee may not be used without the written permission of  
11      Franchisee.

## 13   **6. I-Net Costs not Franchise Fees**

15   The parties agree that Franchisee shall not charge for the use of  
16   the I-Net provided by Franchisee, other than the charges  
17   specified in this section. Franchisee's sole obligation is to  
18   bring dark fiber to the demarcation point that is agreed upon by  
19   the Franchisee and the City. City accepts sole responsibility  
20   for any equipment to make the I Net site operational from the  
21   demarcation point. The parties agree that any costs to the  
22   Franchisee associated with the I-Net provided by Franchisee are  
23   not Franchise fees, and fall within one or more of the exceptions  
24   to 47 U.S.C. § 542(g).

## 26   **7. Franchisee Not Common Carrier**

28   Nothing contained in this section shall require Franchisee to  
29   provide any I-Net service that would, by virtue of provision of  
30   such service, propel Franchisee into common carrier status.

## 32   **8. Alternations**

34   In the event Franchisee alters its Cable System (including by  
35   relocating its headend), it will be responsible for replacing or  
36   extending all connections and Interconnections, including costs  
37   associated with the Institutional Network to the extent that the  
38   I-Net is provided by the Franchisee. Franchisee will reimburse  
39   the City for reasonable Incremental Costs incurred by the City as  
40   a result of such alteration. If the facilities are replaced or  
41   extended, the replacement or extension must have at least equal  
42   capacity and capability. If the alteration or relocation of  
43   facilities is caused by City action or action by a party other  
44   than the City, Franchisee is entitled to seek reimbursement for  
45   any such alteration or relocation of facilities from the entity  
46   causing such alteration or relocation.

## 48   **9. No Restrictions on I-Net Transmissions**

50   Signals received or originated at any Master Control Site may be  
51   distributed on any network to which the Site is connected,  
52   without interference or restriction by the Franchisee, subject to  
53   the provisions of this Franchise and other applicable law.

10. Miscellaneous

A. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this I Net Agreement is , for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions, which other portions shall continue in full force and effect.

B. Notice. Any notice under this I Net Agreement shall be in writing and delivered to:

City of Annapolis  
Shaem Spencer, Esq.  
City Attorney  
93 Main Street  
Annapolis, MD 21401

Comcast of Maryland, Inc.  
253 Najoles Road  
Millersville, MD 21108

Attn: General Manager

C. Governing Law. This I Net Agreement has been negotiated and executed in the State of Maryland and shall be construed and enforced in accordance with the laws of such state.

MAYOR AND CITY COUNCIL OF  
ANNAPOLIS

By: \_\_\_\_\_  
Ellen O. Moyer, Mayor

APPROVED FOR LEGAL FORM AND  
SUFFICIENCY

Shaem C. Spencer, City Attorney Date:

COMCAST OF MARYLAND, INC.



1  
2  
3  
4  
5  
6  
7  
8

\_\_\_\_\_

President (Date)

By:

Bruce D. Abbott, Vice

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